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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, submitted by Mr. Enrique Bernales Ballesteros, Special Rapporteur, pursuant to Commission resolution 1994/7

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INTRODUCTION

1. At its fiftieth session, the Commission on Human Rights considered the thirteenth report of the Special Rapporteur (E/CN.4/1994/23) and adopted resolution 1994/7 on 18 February 1994 in which, inter alia, it reaffirmed that the recruitment, use, financing and training of mercenaries should be considered as offences of grave concern to all States (para. 2) and urged all States to prevent mercenaries from using any part of their territories to destabilize or to threaten the territorial integrity of any sovereign State (para. 3) and to cooperate with the Special Rapporteur in the fulfilment of his mandate (para. 6). The Commission further requested all States that have not yet done so to consider taking early action to ratify the International Convention Against the Recruitment, Use, Financing and Training of Mercenaries (para. 4).

2. Taking note with appreciation of the report of the Special Rapporteur and the concern expressed therein at the continuation of the activities of mercenaries, the Commission on Human Rights requested the Special Rapporteur to report to it at its fifty-first session on all further developments on the use of mercenaries, wherever that may occur (para. 5) and to make specific recommendations on effective measures to combat the activities of mercenaries (para. 7). It further requested the Secretary-General to provide the Special Rapporteur with all necessary assistance for the fulfilment of his mandate (para. 8).

3. Previously, in decision 1992/225, of 20 July 1992, the Economic and Social Council had approved the Commission's decision to extend the mandate of the Special Rapporteur for three years to enable him to carry out further studies on the use of mercenaries and make the appropriate recommendations to the Commission.

4. Pursuant to the provisions of resolution 1994/7, the Special Rapporteur has the honour to submit for consideration by the Commission on Human Rights his fifteenth report on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Implementation of the programme of activities

5. The Special Rapporteur submitted his report to the Commission on Human Rights (E/CN.4/1994/23) on 2 February 1994, at the fourth meeting of its fiftieth session. While in Geneva, the Special Rapporteur had consultations with representatives of various States and held meetings with members of non-governmental organizations. He returned to Geneva from 30 May to 1 June and from 1 to 9 August 1994 in order to conduct a number of consultations, participate in the meeting of special rapporteurs and special representatives, independent experts and chairmen of working groups of the Commission on Human Rights which took place from 30 May to 1 June 1994, and to draft the report which he submitted to the General Assembly (A/49/362).

6. The Special Rapporteur visited the Republic of Croatia on official mission from 13 to 18 September 1994. Subsequently he visited the Federal Republic of Yugoslavia (Serbia and Montenegro), also on official mission, from 19 to 23 September 1994. An account of these two visits is given in chapter IV of this report.

7. The Special Rapporteur submitted his report to the Third Committee of the General Assembly on 11 October 1994. He then proceeded to Geneva from 5 to 10 December 1994 for consultations with State representatives and representatives of non-governmental organizations and to draft this report.

8. On 7 December 1994, the Special Rapporteur had an interview in the Centre for Human Rights in Geneva with the Permanent Representative ad interim of India to the United Nations Office at Geneva, who delivered a note to him in which his Government objected to the inclusion in paragraph 15 of the Special Rapporteur's report to the General Assembly (A/49/362) of the text of the communication of the Permanent Mission of Pakistan to the United Nations Office at Geneva, dated 13 July 1994, referring to a previous communication from the Government of India, dated 4 January 1994, reproduced in paragraph 13 of the above-mentioned report. The representative of India said that her Government considered that the Special Rapporteur's mandate had been put to incorrect use and that the Government of Pakistan, instead of furnishing a substantive reply to her Government's communication, had formulated a series of allegations and comments that were totally irrelevant and outside the Special Rapporteur's mandate. She recalled that, in accordance with the definition of a mercenary, contained in article 47 of Protocol I to the Geneva Conventions of 1949, updated by article 1 of the International Convention adopted by the General Assembly in resolution 44/34 of 4 December 1989, the armed forces of a State could not be regarded as mercenaries.

9. In particular, the representative of the Government of India said that:

(a) Pakistan had failed to give a satisfactory reply to the Government of India's comments about Pakistani sponsorship of mercenary activities in India;

(b) The Pakistani allegation that India had launched subversive and terrorist elements in Sindh was entirely baseless and was only meant to divert attention from its direct involvement in sponsoring mercenary activity in the Indian State of Jammu and Kashmir;

(c) The Pakistani response had acknowledged that Pakistan extends moral, political and diplomatic support to mercenaries spreading terrorism in the Indian State of Jammu and Kashmir. Even extending moral, political and diplomatic support to mercenaries spreading terrorism amounts to actually encouraging and abetting such activity, though the Pakistani authorities were also directly involved in training, arming, providing sanctuary and infiltrating armed terrorists, including foreign and Pakistani nationals. The International Convention against the Recruitment, Use, Financing and Training of Mercenaries clearly enjoins on all States the duty to take all measures to prevent and prohibit illegal activities of persons, groups and organizations

that instigate, organize or encourage such activities. Thus, even by Pakistan's own communication they were clearly guilty of using mercenaries in Jammu and Kashmir.

10. The Special Rapporteur paid special attention to the comments of the representative of India. He explained that, as Special Rapporteur, he had merely reproduced the communication from the Government of Pakistan in his report to the General Assembly. The communication from the Government of India and all other communications received had been treated in the same way. The Special Rapporteur had not discussed the content of the communications, and that was why he had included them in the section of the report entitled "Correspondence".

B. Correspondence

11. Pursuant to the provisions of General Assembly resolution 48/92 of 20 December 1993 and resolution 1994/7 of the Commission on Human Rights, adopted on 18 February 1994, the Special Rapporteur sent a communication dated 29 April 1994 to all States Members of the Organization, requesting the following information:

> "(a) Information relating to any activities of mercenaries which, in violation of the sovereignty and laws of your country, might have occurred or be occurring on your territory (recruitment, financing, training, assembly, transit or use of mercenaries);
>
> "(b) Information relating to any activities of mercenaries on the territory of another country which impair or may impair the sovereignty of your State and the exercise of the right of your people to self-determination;
>
> "(c) Information relating to any activities of mercenaries on the territory of another country which impair or may impair the sovereignty of other countries in your subregion, region or continent and the exercise of the right of other peoples to self-determination;
>
> "(d) Information on domestic legislation currently in force and international treaties to which your country is party relating to the prohibition of activities of mercenaries and their use as a means of violating the sovereignty of other States and impeding the exercise of the right of peoples to self-determination;
>
> "(e) Your Government's position on the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly on 4 December 1989;
>
> "(f) Suggestions which in your Government's opinion might be useful in refining the international approach to the subject of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination."

12. In his recent report to the General Assembly (A/49/362, paras. 10 to 15), the Special Rapporteur referred to communications received from the

Governments of Saudi Arabia (30 May 1994), Australia (1 July 1994), Austria (25 July 1994), Dominica (23 June 1994), Ethiopia (20 June 1994), India (4 January 1994), Luxembourg (20 June 1994), Nepal (26 July 1994), the Niger (11 July 1994), Pakistan (13 July 1994), Panama (5 July 1994), Sweden (20 July 1994), Tunisia (28 July 1994) and Uganda (1 June 1994).

13. Subsequent to the preparation of his report to the General Assembly, the Special Rapporteur was informed of a note verbale from the Permanent Mission of Germany to the United Nations Office at Geneva, dated 3 August 1994, transmitting the following information in reply to the questionnaire sent by the Special Rapporteur:

> "(d) Section 109 h of the German Criminal Code imposes punishment in respect of recruiting for foreign military services. The provision reads as follows:
>
> > '(1) Whoever on behalf of a foreign power recruits a German for service in a military or paramilitary organization, or takes him or her to the recruiting office or military command of such an organization, shall be punished by imprisonment from three months to five years.
> >
> > (2) The attempt shall be punishable.'
>
> Furthermore, pursuant to section 234 of the Criminal Code, punishment is imposed on kidnapping. This provision reads:
>
> > 'Whoever, by trick and artifice, threats or force, kidnaps a person in order to place him or her in a helpless position or to deliver him or her into slavery, bondage or foreign military or maritime service, shall be punished by not less than one year's imprisonment.'
>
> "(e) The International Convention against the recruitment, Use, Financing and Training of Mercenaries, 4 December 1989, was signed by Germany on 20 December 1990. The implementing Act is in preparation.
>
> Pursuant to section 60 subs. 3 in conjunction with section 7 subs. 2 No. 3 of the Aliens Act (Ausländergesetz), transit of mercenaries through Germany may be refused if this damages or endangers German interests."

14. On 11 August 1994, Ambassador Mustafa Bijedic, Permanent Representative of the Republic of Bosnia and Herzegovina to the United Nations Office at Geneva, sent the following letter to the Special Rapporteur:

> "Upon the instructions of the Ministry of Foreign Affairs of the Republic of Bosnia and Herzegovina of 8 August 1994, I am instructed to inform you that so far the relevant authorities of the Ministry of Defence have registered 6 (six) foreigners, volunteers from Sudan. They left the territory of the Republic of Bosnia and Herzegovina in spring 1993. They stayed some time in the zone of the 5th Corps of the

Army of the Republic of Bosnia and Herzegovina (Bihac area). Most recent reports of all units of the Army have proved that there is not any of foreigners among our soldiers."

15. Following the publication of his report to the General Assembly, the Special Rapporteur received a letter from Mr. Dragomir Djokic, Chargé d'Affaires ad interim of the Permanent Mission of the Federal Republic of Yugoslavia (Serbia and Montenegro) to the United Nations, dated 12 October 1994. The text of this letter, which contains opinions on paragraphs 56 and 59 of the report to the General Assembly, is as follows:

"I am writing to you regarding your report on the question of the use of mercenaries (A/49/362). I take this opportunity to draw your attention in particular to its part relating to the presence of mercenaries in the former Yugoslavia.

"(a) Paragraph 56 of the report contains opinions and qualifications which are contrary to the information submitted in the reports of the Secretary-General (S/1994/600; S/1994/1067) regarding the United Nations peace-keeping operation in Bosnia and Herzegovina - ('the siege of Gorazde, a Muslim center in eastern Bosnia which is one of security zones'; 'confrontation in Bihac between Muslim secessionists led by Fikret Abdic'; '... Bosnian Serbs who have proclaimed their own Serbian republic of Bosnia').

"(b) Your statement in paragraph 59 about a communication which contains 'additional information relating to previous allegations that mercenaries are participating in the conflict between Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro)', is inaccurate and unfounded. It is very well known, as is verified in reports of the Secretary-General, that there is no military conflict between the Federal Republic of Yugoslavia and Croatia. Therefore, no mercenaries are taking part in such a conflict.

"In order to avoid possible mistakes, I would suggest that in presenting your reports you should fully take into account the reports of the Secretary-General on the situation in the territory of the former Socialist Federal Republic of Yugoslavia.

"I would like to assure you that the Federal Republic of Yugoslavia will continue to provide you assistance in performing your task as a Special Rapporteur."

16. With reference to paragraph (b) of the above letter from Mr. Dragomir Djokic, the Special Rapporteur would point out that the original version of his report to the General Assembly, drafted in Spanish, paragraph 59 contains the words "que actuaron" (participated) and not "que están actuando" (are participating). In other words, the Special Rapporteur used the tense and grammatical form corresponding to the past. The error in the translation into English cannot be attributed to the Special Rapporteur.

17. On 7 September 1994, the Permanent Mission of Paraguay to the United Nations Office at Geneva sent a communication to the Special Rapporteur in reply to his request for information of 29 April 1994. It stated that activities involving the recruitment, use, financing or training of mercenaries, did not exist in Paraguay nor was the Government aware of mercenary activities in other countries that might affect the sovereignty of the Paraguayan State or the exercise of its people's right to self-determination. Lastly, it referred to the international instruments to which the Republic of Paraguay is a party, and particularly to the Geneva Conventions of 1949 and their Additional Protocols, as well as the provisions of Paraguay's Constitution, adopted on 20 June 1992, and particularly articles 1, 10 (first part) and 42 (end). The last-mentioned provision states specifically that secret societies and associations of a paramilitary nature are forbidden. The Permanent Mission of the Democratic Socialist Republic of Sri Lanka to the United Nations Office at Geneva sent a communication to the Special Rapporteur, dated 6 December 1994, which stated: "I have the honour to inform you that the Government of Sri Lanka is studying the question of becoming a party to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries".

18. In reply to the Special Rapporteur's request for information from all States Members of the United Nations on 29 April 1994, the Permanent Mission of India to the United Nations Office at Geneva sent the following communication to the Special Rapporteur on 6 December 1994:

> "(a) Commission on Human Rights resolution 1994/7 recalls the Charter principles upholding the political independence and territorial integrity of States and the self-determination of peoples. The resolution also recalls the need for non-use of force or threat of use of force in international relations as developed in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. The resolution recognizes that the mercenaries are used for activities which violate those principles.
>
> "(b) Over the last decade, there has been an evolution in the historical context of the mercenary problem. The problem of mercenaries is no longer confined to any particular region; it has assumed global dimensions. Most countries in the world have attained emancipation from colonial bondage through exercise of their right to self-determination. Yet, people of these countries are subjected to violence and destruction unleashed by foreign mercenaries.
>
> "(c) Activities of alien mercenaries are used to foment terrorism and violate human rights of innocent civilians. Mercenaries are used to curb the democratic right of people to participate in elections [by using] fear. Mercenaries are also used to challenge and destroy the tolerant fabric of multi-ethnic and multi-religious societies to impose a monolithic ideology alien to the local milieu. Religious fundamentalism provides an ideological underpinning to the mercenary movement. A plethora of religious groups try to impose their views, not through religious preaching, but the fear of the gun. Their actions run counter

to all norms of civilized behaviour. The political undertones of these religious groups come out in the demand for secession.

"(d) Mercenaries are conceived as an ideal instrument by those States, which wish to advance their extraterritorial interests, while maintaining deniability. Such States are guilty of directly violating the resolution, which urges all States to prevent mercenaries from using any part of their territories to destabilize or to threaten the territorial integrity of any sovereign State.

"(e) Our concern with the problem flows from India's experience of foreign mercenaries operating in the Indian State of Jammu and Kashmir. With the end of the Afghan war, there was a large-scale influx of foreign mercenaries in the State. These were recruited, financed and trained by a neighbouring country with a view to advancing her territorial interests in Jammu and Kashmir. Battle hardened, and equipped with most modern weapons, they were infiltrated to impose by violence an ideology of intolerance and preaching secession.

"(f) The recently released 'Human Rights Watch/Arms Project - Arms and Abuses in Indian Punjab and Kashmir' narrates in exhaustive detail the diffusion of advanced small arms and light weapons to terrorists in Punjab and Jammu and Kashmir from a neighbouring State, resulting in serious human rights violations. It mentions the Afghan pipeline and diversion of weapons to Jammu and Kashmir.

"(g) These foreign mercenaries work under different banners - Harkat-ul-Ansar (HUA), Lashkar-e-Taiba (LET), Markaz Dawat-ul-Irshad (MDA), Jamat-e-Ahal-e-Hadis, Harket-ul-Jehad-e-Islami, Harkat-ul-Muiahideen, Al Barq, Hazb-ul-Mujahideen, Ikhwan-ul-Musalmeen, etc. The names themselves betray the fundamentalist leanings of these organizations. Most of these organizations have their bases in a neighbouring country, which not only allows them to act with impunity but renders material help also. Many of these groups are known to have been carrying out terrorist operations in other countries too. By the end of 1993, around 800 foreign mercenaries are estimated to have arrived in the Kashmir Valley to take control of terrorist activities. Apart from attacking the Security Forces, these foreign mercenaries have also inflicted casualties on the civilian population.

"(h) Recently, the foreign mercenaries have also stepped up their activities in the Doda district of the Jammu and Kashmir State. They have undertaken selective attacks on members of the minority community. The clear objective is to communalize the local politics, which have so far remained peaceful with harmonious relations between the two communities.

"(i) Since 1990, 57 foreign mercenaries have been arrested in Jammu and Kashmir for their involvement in the militant activities and 214 have died in various encounters. However, their overall number has continued to grow. By the end of June 1994, about 1,200 foreign nationals are estimated to be operating in the Kashmir Valley and Doda district of Jammu region.

"(j) As for their activities, one recent case was that of two British nationals Kim Hou Sego and David Mackie, who were kidnapped in June 1994 by terrorists belonging to Harkat-ul-Ansar, a foreign mercenary outfit, and were held hostage for 17 days while demanding release of 3 leading activists (themselves foreigners/outsiders). This was followed by the kidnapping of 3 British and 1 United States national in or around New Delhi in September-October 1994 by terrorists claiming themselves to be members of an organization styled 'Able Hadith', and again demanding the release of 10 terrorists including the 3 mentioned earlier.

"(k) The international community must enhance cooperation to prevent and combat mercenary activities. The Special Rapporteur in his report submitted to the forty-ninth United Nations General Assembly session 'noted in particular the comments submitted by a Member State', which contain many useful ideas to strengthen international cooperation in this regard. We agree with these suggestions which are contained in the Special Rapporteur's report as follows:

- Strengthening of international cooperation in the struggle against terrorism;

- The identification of sources of financing of mercenary activities for indulging in terrorism;

- The imposition of firm economic sanctions against countries which sponsor mercenary activity and terrorism;

- Incentives to States to deny passports and visas to terrorists and mercenaries;

- Total ban on the publication of announcement about the recruitment of mercenaries."

II. LOCATION OF MERCENARY ACTIVITIES

19. The objectives of collective security and peace are inseparably linked with the existence of the United Nations. Despite the immense progress made in achieving these objectives, conflictual situations persist and have, in various ways, affected peace in certain countries or regions, as well as the sovereignty and stability of constitutional Governments. In the context of these situations, fundamental rights, such as the right to life, liberty, physical integrity and the security of person and peoples, have been violated. The most serious although not the only factor that has affected fundamental rights on a vast scale has been armed conflicts, which have occurred in very large numbers throughout the second half of the twentieth century. Some of these conflicts occurred in 1994.

20. The purpose of this report is once again to draw attention to the inevitable relationship between the development of armed conflicts and the use of mercenaries by one or all parties involved in the conflict. This link is a factor that must be taken into account by the United Nations and by all Member States. Although considerable progress has been made in condemning mercenary

activities and an International Convention adopted to counter the recruitment, use, financing and training of mercenaries, it still lacks the necessary number of ratifications to enter into force. It should not, however, be overlooked that for the most part it is armed conflicts that dictate how and where mercenaries - who are assigned the task of performing the cruellest and most violent acts in the conflict - are to be used.

21. The point made in the previous paragraph is not hypothetical, but based on proven facts in various armed conflicts. Mercenaries exist; they constitute an international scourge whose sole aim is to perform violent acts which affect human lives, cause material damage and compromise economic activities, and to carry out attacks which, in more than one case, have unleashed or aggravated conflicts with catastrophic consequences for the peoples involved.

22. Mercenaries usually deny that they are mercenaries and present altruistic, ideological and even religious reasons to mask the true nature of their participation under international law. In point of fact, ideological factors, the profession of war and the psychological hang-ups to which it gives rise may well play a role in the personal make-up of the mercenary, but in actual practice the constant factor is money. Mercenaries are paid for what they do. The hired mercenary attacks and kills for gain, in a country or in a conflict not his own. According to previous records, charges brought and the cases of mercenary activities analysed by this Special Rapporteur, the mercenary is an expert in war and in the illegal and criminal activities which he is hired to perform and for which he receives a large sum of money. He tends to adopt extremist, radical and highly intolerant views, but he would not perform any of his criminal acts against the most elementary rights of individuals and peoples unless he were paid.

A. Armed conflicts and mercenary activities

23. Generally speaking, armed conflicts and the existence of professional soldiers whose job situation is uncertain or does not meet their financial expectations are factors which contribute to make up a mercenary. There are private entities or public bodies which, under a legal cover conduct clandestine criminal operations as a parallel activity, and hire persons to commit unconscionable acts for money. Although involvement in armed conflict is the best known form of mercenary activity, mercenaries may act even where there is no armed conflict, hiring out their services for the perpetration of criminal acts on behalf of a particular Power or group interested in causing damage in another country without being identified as the party responsible. In some cases, it is the authorities of a State, an opposition group, a domestic resistance movement or a criminal organization which may recruit mercenaries to engage in acts prohibited by the laws in force, such as the formation of a paramilitary force, organization of a death squad, provision of military protection for illicit drug trafficking activities, smuggling, arms traffic, etc.

24. Within the above context, the mercenary, regardless of his nationality, generally offers his services or is available for contact. The organizations involved in recruiting such persons work with government agents or with groups that are parties to a conflict, a fact that makes it easier to establish a

connection and evidence of criminal association between recruiter and recruit. In some cases, legal devices are used to conceal the nature of the assignment or to make the mercenary appear to be a national of the country in whose armed conflict he is involved. Although the use of such advice conceals the mercenary's real status, the origin of the contractual relationship, the payment, the type of services agreed, the simultaneous use of other nationalities and passports, etc., serve as leads for establishing the true nationality of persons involved in an armed conflict in respect of whom there are well-founded suspicions that they are mercenaries.

25. The location of events related to mercenary activities outlined by the Special Rapporteur in his previous reports corroborates the view that the use of mercenaries usually occurs in relation to an international or domestic armed conflict, when one or all of the parties to the conflict have recourse to mercenaries to carry out their military strategy. Even though there is massive mercenary activity in various armed conflicts today because of the objective increase in the supply of this type of activity, the recent re-emergence of the mercenary occurred in armed conflicts arising in connection with a people's right to self-determination. From the 1960s onwards and in the context of the decolonization of Africa, the active presence of bands of mercenaries constituted a device by the colonial interests which wanted to remain in the region, thereby affecting the process of self-determination from which a new African State was emerging or giving rise to situations of destabilization and war, in which the mercenary ingredient was of fundamental importance in intensifying and internationalizing the armed conflict.

26. There are complex cases in which allegations of mercenary activities in domestic conflicts are reported by international press sources and specialized analysts, but are denied or met with a dogged silence when information is sought from official sources. The Special Rapporteur wishes to draw attention to this objective difficulty, which prevents verification of the presence of mercenaries in domestic conflicts despite the internationally recorded evidence. Conflicts in which a mercenary component has been reported have included those in Afghanistan, Armenia-Azerbaijan, Chad, Myanmar, Sudan and Tajikistan.

27. Generally speaking, mercenaries are former soldiers who compulsively identify themselves with the job of making war, pretend to be fanatical practitioners of an ideological option and are intrinsically intolerant or violent persons. However, the aggravating factor is that their participation is linked to the bloodier aspects of a conflict and to the most criminal violations of human rights. Moreover, financial considerations and the desire for illicit gain through looting which is associated with their participation may be decisive in extending the duration of the conflict. The mercenary's interest lies not in peace and reconciliation, but in war, since that is his business and his livelihood. For this reason, when wars come to an end or become scarce, the mercenary tends to become involved in other prohibited activities. Previous reports have referred to foreign mercenaries involved in activities intended to destabilize constitutional Governments or in connection with drug or arms trafficking. Although the Special Rapporteur's reports do not claim to establish a classification of mercenary activities, the wide range of situations in which mercenary activity is apparent should be taken

into account since it affects sovereignty, self-determination, stability and security within a State, as well as the human rights of its inhabitants.

28. The activities referred to in this chapter may be engaged in by nationals in their own country; however, in this case they would not be mercenary activities as such, but acts prosecutable as offences under the relevant domestic legislation. They become mercenary activities when, for instance, foreign experts are recruited to illegally form the security force or personal guard of a public authority, or a death squad organized by a private individual or group. Foreign nationality is, in accordance with the international provisions on the question, an essential factor for classifying an offender as a mercenary. It should nevertheless be noted that drug traffickers, arms dealers, terrorists and mercenaries generally act as interconnected international gangs. Thus, an irregular armed group engaging in terrorism may rapidly become a mercenary group by travelling to the territory of a neighbouring State in order to cover and give protection to a gang of drug traffickers, or to occupy a portion of foreign territory, removing it from the authority of the sovereign State.

B. Cooperation by States in preventing mercenary activities

29. In accordance with paragraph 7 of Commission on Human Rights resolution 1994/7, which requests the Special Rapporteur "To make specific recommendations on effective measures to combat the activities of mercenaries", the next few paragraphs contain information and analyses which are useful for formulating policies to prevent and combat mercenary activities.

30. The first observation that can be made on the basis of studies of the problem is that the presence of mercenaries is a recurrent activity that can arise anywhere in the world in the context of an already existing armed conflict or for the purpose of causing one. Mercenaries may also be present in the absence of an armed conflict, with a view to perpetrating attacks that cause material damage or affect the lives of individuals, or destabilize the constitutional Government of a specific country. While mercenaries are typically present in an armed conflict, it would be incorrect to limit the description to those cases since it applies to any situation in which sovereignty, self-determination, political stability and the human rights of the population are affected in a premeditated fashion by operations in which the active agent is a foreign mercenary specially hired to carry out unlawful criminal acts.

31. While it is true that a number of African countries have suffered most from the criminal action of mercenaries in recent decades, this should not lead to the erroneous conclusion that there are mercenaries only in Africa. The facts show that any country can be the victim of mercenary action. Moreover, mercenaries come from a variety of countries; they are not organically linked to any State, although there are cases where temporary associations are established with intelligence agencies which use mercenaries, or the organizations that recruit and train them, to carry out acts of sabotage and hostility against a third State, so that responsibility for the attack cannot be attributed to the country which is really responsible for it.

32. A second conclusion is that there are situations where a legal vacuum or loophole permits the existence, in some countries, of legally registered associations which offer contracts freely to people who want to work as mercenaries, without the act of advertising or signing such a contract being regarded per se as illegal and prosecutable. In these cases, the legal loophole is that the law allows the market to operate freely and people to be recruited freely. The person who recruits a potential mercenary is simply an intermediary and is not committing an act that is illegal and criminal per se, because the mercenary will not necessarily receive money to commit a crime, the hiring process occurs in a place other than where the criminal action takes place, and the laws of the country do not classify mercenary activity in a separate category which automatically links the name of the mercenary and his signing of a contract with the commission of a punishable offence. This situation requires carefully investigating and monitoring market activities related to the recruitment of persons for unspecified services, which constitute a traffic culminating in objective damage in a territory other than the one in which the contract was made and jeopardizing the sovereignty of a third State, the life of persons, the economy and self-determination.

33. Some of the possibilities that should be considered are cancellation of the operating licences and permits of entities that have hired mercenaries to engage in illegal activities, the refusal of passports or visas to mercenaries and prohibiting them from passing through the territory of other States.

34. Mercenaries are generally people who have belonged to the regular armed forces of a country and as such have taken part in military conflicts. In other words, it is their job to make war and it is for this precise reason that their services are sought. From this standpoint, the unemployment they face when they are repatriated and retired from the regular forces and certain personality changes they have undergone as a result of warfare may contribute to their becoming mercenaries. However, this dangerous extreme could be kept under control if States were to agree on a policy of prevention, exchange of information, follow-up and care of these kinds of people who have developed a tendency towards aggressive behaviour. It is possible to implement a policy of employment and psycho-social care for people with problems resulting from their participation in warfare, and it is also possible for the State to establish a legal framework for the activities of associations of former combatants to prevent them from going to extremes such as the glorification of war, the fostering of intolerance and the adoption of ideologies which cultivate violence and military interventionism.

35. Certain illicit activities such as drug trafficking, trafficking in people and arms, smuggling, terrorism, etc., are related to the recruitment of mercenaries. Such acts occur in connection with armed conflicts or independently of them. In both cases, it has been found that gangs engaging in these activities require a military component to serve on security missions, to move merchandise, to fly aircraft and, if the need arises, to fight the regular forces that are protecting the sovereignty of the State affected by these illicit acts. States therefore have an interest in preventing bands of mercenaries from being formed or acting within their territory, in enacting laws that criminalize mercenarism and in taking legal

action to suppress mercenary activity. Where mercenaries are former members of the armed forces or the police, this should be an aggravating circumstance and the penalties should be more severe.

36. Finally, with a view to refining the topic, there must be no attempt to justify mercenaries in the media nor any misconceptions regarding this type of human behaviour. A mercenary is not a hero nor is he the last romantic guerrilla, but a criminal whose actions are associated with the vilest crimes against life. The State and society must take notice of, prevent, punish and morally condemn mercenarism. At the same time, national legislation must be very harsh on State services, such as intelligence services, or authorities with repressive proclivities or private totalitarian-minded associations which, resorting to markets where mercenaries are available, recruit individuals for the purpose of establishing praetorian guards, death squads or operational groups devoted to political repression, or assassination of political, religious or other adversaries. Unfortunately, these things happen in today's world and are related to the presence of foreign mercenaries.

37. Despite the already complex nature of the general picture, situations arise which cannot be classified under the heading of what the present state of international law describes as mercenarism. There is a tendency to employ the term extremely loosely and to use it in ordinary conversation about any adversary who is presumed to indulge in immoral conduct and be partial to ill-gotten gains. An examination of situations involving the right to sovereignty and self-determination reveals the existence of aspects that do not precisely fit the description of mercenarism, although other factors can be observed: criminal conduct, payment, involvement in a conflict on behalf of a third party, etc. Using a hypothetical example, what is the status of a foreigner who enters a country and acquires its nationality to conceal the fact that he is a mercenary and acts for a third State or the other side in domestic armed conflict? What steps should be taken against a person of dual nationality, one of which is that of the State against which he is acting, while he is paid by the State of his other nationality or by a third party? What are the limits of jus sanguinis in an armed conflict when it is invoked by persons who are paid and sent to fight in a domestic or international armed conflict taking place in the country of their forebears? Casuistry may well bring to light several more situations which in practice would re-open the discussion on the efficiency of domestic and international instruments that prevent, classify and punish criminal acts in which the aggravating circumstance is that they were committed by an agent presumed to be a mercenary. There is a need here to implement fully the recommendation contained in paragraph 9 of General Assembly resolution 48/92 of 20 December 1993, namely, to organize a meeting of experts which, together with the Special Rapporteur, would provide the Commission on Human Rights and the States Members of the United Nations with a technical, legal, political and philosophical opinion to serve as a basis for updating and correctly interpreting international instruments on the subject.

III. MERCENARY ACTIVITIES IN AFRICA

A. General aspects

38. The African countries are those which have suffered most directly from the presence of mercenaries on their territory. Mercenary activities have been primarily aimed at preventing, disrupting or in some way modifying the exercise of the right of peoples to self-determination. Activities of this type have also been reported as having a political-military character, aimed at undermining the stability of constitutional Governments in the region.

39. In the course of the past 20 years, young African countries have suffered attacks on the self-determination of their peoples, their territorial integrity and the stability of their constitutional Governments; in these attacks mercenaries have been recruited specifically for this purpose and have acted with extreme cruelty, to the detriment of fundamental rights of the peoples affected. Angola, Benin, Botswana, the Comoros, Lesotho, Mozambique, Namibia and Zimbabwe are countries which have suffered mercenary attacks which were intended to prevent self-determination, undermine the established Governments and subject them to the control of a regional Power. Racist attitudes and support for the apartheid system have been other significant characteristics of mercenary activities in these countries.

40. After many years of armed conflict, some of the countries most affected by armed violence have begun processes of political negotiation leading to the establishment and implementation of peace agreements, sponsored by the United Nations and the Organization of African Unity (OAU). The Peace Agreement of 4 October 1992 signed in Rome between President Joaquim Chissano and Alfonso Dhlakama, chief of the Mozambican National Resistance Movement (RENAMO), ended the bloody 17-year conflict in Mozambique, establishing a cease-fire supervised by military observers of the United Nations Operation in Mozambique (ONUMOZ), disarmament, concentration and general demobilization of the opposing forces, the subsequent organization of presidential and legislative elections. These were held normally on 27 and 28 October 1994 under United Nations supervision.

41. The peace agreement signed in Cotonou, Benin, on 25 July 1993 and Akossombo, Ghana, on 12 September 1994, was intended to end the bloody conflict which has been raging for more than four years in Liberia and which has caused over 100,000 fatalities. The Akossombo Agreement provided for the formation of a State council, a transitional executive which it has not yet been possible to establish owing to disagreement about its functions and composition.

42. In addition, the peace agreement signed on 4 August 1993 in Arusha, United Republic of Tanzania, aimed at terminating the conflict between the then Government of Rwanda and the forces of the Rwandese Patriotic Front (FPR) did not work, and this led to the catastrophic internal confrontation of a genocidal character that broke out in April 1994. The Special Rapporteur reiterates the need, already expressed in his report to the General Assembly, for an exhaustive investigation of the attack on the plane in which the Presidents of Rwanda and Burundi were travelling, which was one of the factors that triggered the massacres.

43. In recent years, Africa has been affected by situations of political instability almost always accompanied by armed violence. The cases of Burundi, Cameroon, Chad, Djibouti, the Niger and Togo were mentioned in previous reports by the Special Rapporteur. To them he must add, with deep concern: the serious situation in Somalia, where the war between clans and sub-clans has led to the institutional overthrow of the State and necessitated humanitarian intervention by the United Nations; the Sudan, where civil war has profoundly affected the population's basic living conditions; and, lastly, Mali, where despite the National Peace Covenant of 1992, clashes continue between the government forces and the Touareg rebels, especially in the regions of Niafunké and Gao.

44. The conflicts mentioned above are affecting the human rights of the African peoples and impeding development activities. The presence of mercenaries, in those cases where that is a factor, further increases these peoples' suffering. The international community should give thought to the background and habitual course of the conflicts in Africa and support African efforts to secure rapid and effective agreements guaranteeing the right of self-determination, fundamental freedoms, democracy and development to all peoples who, despite the attainment of independence of some years ago, are unable to accede to peace with justice and development, mainly because of the violence, foreign interests and armed conflicts.

B. Angola

45. The long and bloody conflict in Angola has been a constant subject of concern, analysis and recommendations by this Rapporteur. In paragraph 43 of his latest report, submitted to the General Assembly in October 1994, he stated that efforts to ensure the success of the peace negotiations between the two parties to the conflict, which began in November 1993 in Lusaka, Zambia, under the mediation of the United Nations, might fail because activity on the military fronts is continuing and UNITA is not showing a firm commitment to effective compliance with a peace agreement. It was also stated that, in this context, mercenaries were continuing to be very active in Angola. Mercenaries were providing military training and engaging in sabotage, blockades and attacks.

46. The many references made by this Rapporteur in his reports of the last three years to the Commission on Human Rights and the General Assembly were fully confirmed by the Government of the Republic of Angola in a letter addressed to the Assistant-Secretary-General for Human Rights on 27 October 1994. With regard to the Special Rapporteur's references to the presence of mercenaries undermining Angola's self-determination, the Government of Angola "confirms the charges made by the Special Rapporteur as well as those made in documents E/CN.4/1994/23, pages 18 and 19 and A/45/385, page 6, and informs the Centre for Human Rights that the situation in Angola is even worse now that UNITA has illegally occupied part of the country. The Government of Angola requests the Centre for Human Rights to continue to condemn, in every possible way, interference by mercenaries fighting alongside UNITA against the Angolan people in our country's territory, with support from Zaire and other countries".

47. The following is the complete text of this important communication from the Permanent Mission of the Republic of Angola to the United Nations Office at Geneva:

"I have the honour, on behalf of the Government of the Republic of Angola, to reply to the letters which Mr. Enrique Bernales Ballesteros, the Special Rapporteur on the question of the use of mercenaries, sent on 29 July and 17 November 1992, 12 February and 9 July 1993 and 29 April 1994 to H.E. the Minister of Foreign Affairs of Angola concerning the activities of mercenaries (recruitment, financing, training, concentration, transfer and use) that have taken place in our territory in violation of our country's sovereignty and laws, as well as mercenary activities in the territory of Zaire that undermine the sovereignty of our State and the exercise of the right of our people to self-determination.

"Unfortunately, the war being waged by UNITA against the innocent population requires of the Government of Angola financial outlays and a concentration of human resources that are exceeding our capacity. The defence of the civilian population - of children, women and old people - is a sacred obligation for our Government and takes precedence over everything else, so that all the resources at our disposal are focused on it, which is why we were unable to reply to your letter within a reasonable period of time.

"The Government of Angola confirms what the Special Rapporteur stated in his letter of 17 November 1992, namely:

'Non-governmental sources have reported a large concentration of mercenaries in Angolan territory, near the border with Zaire. These sources have also reported as many as 10 clandestine landings per day of planes from abroad, in Mususso and Jamba.'

"The situation has not changed and has become even more threatening for Angola. Zaire continues to be a place of refuge and a location favoured by mercenaries who, working alongside UNITA, kill women, children and innocent peasants every day."

"In another letter, dated 12 February 1993, the Special Rapporteur also expressed his 'renewed concern at UNITA's resumption of military activity (in Angola), which is seriously endangering the lives and peace of the Angolan people. (...) Unfortunately, UNITA has not accepted the results of the latest general elections and has launched a new appeal for war. (...) The international community is deeply concerned at the interruption of the peace-making process in Angola and at the responsibility that lies with UNITA'.

"Yet another letter, dated 9 July 1993, reads as follows:

"I have the honour to inform you that I have received information about the presence of foreigners in the internal armed conflict being waged in your country since the União Nacional para a Independência Total de Angola movement (UNITA) refused to

recognize the results of the presidential and legislative elections of 29 and 30 September 1992. (...)

"(a) In November 1992 a large concentration of mercenaries was reported in Angolan territory, along the border with Zaire. It was also reported that nearly 10 clandestine landings of planes from abroad, principally South Africa, had been observed at Mussuco and Jamba;

"(b) In December 1992, I received information about the presence of foreigners, mostly of South African and Zairian origin, in UNITA's ranks;

"(c) On 21 January 1993, the international press published information to the effect that white, English-speaking mercenaries had been fighting alongside the UNITA forces when they seized the village of Soyo in the northern part of the country and its oil refinery. Foreign diplomats serving in Luanda allegedly confirmed that information and said that they had proof of the mercenaries' participation;

"(d) The commander of the northern region, General Eusebio Brito Teixeira, who recaptured the city of Soyo on 4 March 1993, allegedly stated at the time that four white mercenaries had been buried together with the UNITA dead. General Brito Teixeira also reported that Zairian nationals had been among the UNITA forces at the time. Inhabitants of Soyo also allegedly stated that Zairian citizens had participated in the occupation of their town and the looting by the UNITA forces which followed;

"(e) Over 100 former members of the 31st and 32nd South African defence battalions, which were demobilized in February 1993, allegedly fought alongside UNITA at Huambo. They had reportedly been hired as security guards for Angolan oil installations and refineries by a certain Eeben Barlow, and brought to Angola on clandestine flights by the Propilot transport company in planes belonging to the Westair company. Three of these former soldiers, Geoffrey Landsbreg, Hermanus Ferreira and Nico Bosman, were allegedly wounded in combat at Huambo and evacuated on a clandestine Propilot flight to South Africa, via Windhoek, in March 1993."

The Government of Angola confirms the Special Rapporteur's charges as well as those made in E/CN.4/1993/23, pages 18 and 23, and A/48/385, page 6, and informs the Centre for Human Rights that the situation in Angola is even worse now that UNITA has illegally occupied a part of the country. The Government of Angola requests the Centre for Human Rights to continue to condemn, in every possible way, interference by mercenaries fighting alongside UNITA against the Angolan people in our country's territory, with support from Zaire and other countries.

"I would confirm my Government's particular satisfaction in being able to assure you that the decisions contained in General Assembly resolution 48/92, adopted on 20 December 1993, and in Commission on Human Rights resolution 1994/7, entitled 'Use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination', adopted at the 30th meeting on 18 February with a vote in favour by Angola, were warmly welcomed by the Government of Angola, which participated enthusiastically in their drafting.

"I can assure you that the Government of Angola attaches the greatest importance to human rights. Angolan legislation guarantees the protection at all levels of these rights, which are constantly being monitored and strengthened by the courts. Unfortunately, human rights in the provinces illegally occupied by UNITA are the target of the worst atrocities and ongoing violations. The unprotected population of the provinces illegally occupied by UNITA are subjected to every kind of arbitrary act and the most revolting abuses, and are forced to fight against their own brothers alongside the mercenaries.

"Despite the difficulties and restrictions of all kinds created by a violent war that is destroying all sectors of our economic, social, administrative and cultural life, every day sees tangible evidence of our Government's observance of human rights. The Angolan Government will pursue its policy of promoting and protecting human rights and complying with the provisions of international human rights and humanitarian instruments. Once again, the Government of Angola requests the Centre for Human Rights to continue to condemn, in every possible way, interference by mercenaries fighting alongside UNITA against the Angolan people, with support from Zaire and other countries.

"On behalf of the Government of the Republic of Angola, I take this opportunity to convey to you the renewed assurances of my highest consideration and the sincere desire of the Government of the Republic of Angola to establish the closest possible cooperation with the Centre for Human Rights."

48. In September 1994 several savage engagements took place along the Angolan coast, principally in the oil-producing areas in the Cabinda and Soyo enclave, and in the north-eastern part of the country. In November the fighting spread to Huambo and the northern city of Mbanza-Kongo. In the context of this fighting, the Special Rapporteur was informed that some 400 mercenaries were concentrated near the border with Namibia.

49. Despite the tensions and concern described in the attached communication, negotiations between the Government of Angola and UNITA, which had been taking place under the auspices of the Secretary-General of the United Nations since November 1993, continued until a new peace agreement was finally signed on 20 November 1993 in Lusaka. The cease-fire was set for 22 November, although during the following days it was violated several times - in Catengue, 60 km south-east of Benguela, and in the north, in the town of Uige, by UNITA forces which, under the agreements, are to be demobilized and part of them integrated

into the regular forces. This process will be supported and supervised by the United Nations which, together with representatives of both parties, is also to supervise effective compliance with the cease-fire.

50. Whereas the 1991 Estoril Peace Agreements were a failure, the political and military conditions in which the Lusaka agreements were signed provide a more realistic basis for confidence in their effective implementation, which should lead to peace, political stability and the reconciliation of the entire Angolan people. In the context of this process, the Special Rapporteur feels that special care should be taken in investigating crimes attributable to mercenaries and take steps to ensure that mercenaries are effectively withdrawn from the territory of Angola. The suffering of the Angolan people throughout a war in which bands of mercenaries constantly became involved and committed savage crimes should be invoked by the entire world in condemning and eradicating the activities of mercenaries as directly and effectively as possible.

C. South Africa

51. The activities of mercenaries in connection with the policy of apartheid and the resulting social and political violence used to be a standard topic in this Rapporteur's reports. It is a fact that, in order to carry out its racist policy, the former South African authorities associated with that regime trained, hired and used mercenaries to perpetrate crimes against members of the opposition and several southern African countries. Today the situation has changed, apartheid has been eliminated, and South Africa has opted for a democratic regime and multiracial integration, the first President being Mr. Nelson Mandela. In this context, mercenary activities have virtually ceased and South Africa has embarked upon a policy of cooperation, peace and development with the neighbouring countries of southern Africa.

52. This relaxed climate notwithstanding, it should be mentioned that there are still some violent minority groups, such as the Afrikaner People's Front and the Afrikaner Resistance Movement (AWB), which have for the time being fallen back but which are equipped militarily, with mercenaries in their ranks and a history of links to criminal attacks dating back to apartheid. There is no information indicating that these groups have disbanded, disarmed or dismissed the mercenaries working for them. Nor is there any information about the adoption of decisions to make mercenaries who were using the territory of South Africa as a safe haven leave the country. In this context, the Special Rapporteur feels that, if democracy is to be strengthened as much as possible, the presence of mercenaries in South Africa must immediately be prohibited and measures adopted that punish the recruitment, financing and training of mercenaries and mercenary activities and investigate crimes committed by mercenaries, within and outside of South Africa, in order to ensure that such acts do not go unpunished.

IV. PRESENCE OF MERCENARIES IN THE TERRITORY OF THE FORMER YUGOSLAVIA

53. The Special Rapporteur has examined the various allegations received about the presence of mercenaries in the territory of the former Yugoslavia since his tenth report, submitted to the General Assembly at its forty-seventh session (A/47/412, annex). As a result of these allegations, interviews with

the representatives of the Republic of Croatia, the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Republic of Bosnia and Herzegovina to the United Nations in New York and at Geneva, and an exchange of communications with those countries' authorities, the Special Rapporteur received official invitations from the Government of Croatia and the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) to visit their countries and become more familiar with the allegations of the presence of mercenaries in those territories and their connection with the armed conflicts that have been and are taking place in the territory of the former Yugoslavia.

54. The Special Rapporteur accepted the invitations, which led to visits from 13 to 18 September 1994 to Croatia and from 19 to 23 September to the Federal Republic of Yugoslavia (Serbia and Montenegro). These visits are described and analysed below.

A. Visit to the Republic of Croatia

55. The visit to the Republic of Croatia was to serve a number of purposes. One was to verify another State's allegations about the presence of mercenaries in that country committed to fighting for the Croatian cause and, at the same time, the allegations made by the country's authorities about mercenaries in its territory who were taking part in the armed conflict, but acting against the territory, installations, towns and population of the Croatian State. Another purpose was to interview any alleged mercenaries who might be detained in prison, review court cases and observe first-hand the damage caused by the armed conflict afflicting Croatia, in which mercenaries are reported to be involved. In pursuit of these broad objectives, the Special Rapporteur met representatives of the Ministry of Defence, the Ministry of the Interior, the Ministry of Justice and the Ministry of Foreign Affairs, as well as Croatian political leaders, journalists and citizens. Finally, he made brief visits to destroyed villages above Dubrovnik and to destroyed, burnt-out and uninhabited villages in the Krajina area.

56. Among the civilian sources consulted by the Special Rapporteur were Croatian citizens directly affected by the war, people whose houses had been destroyed, whose relatives had been killed and who, in some cases, had been forced to flee and seek refuge in safe areas. Some of those interviewed said they had been members of the former Yugoslav People's army, which later joined the Croatian national cause; others had been members of the Croatian irregular forces (HOS) and participated in campaigns in Bosnia and Herzegovina. Yet others had volunteered in favour of their country of origin, Croatia, when the armed military conflict broke out in part of the territory of the new State after it had been recognized by the United Nations.

57. One civilian source consulted said that among the Croatian civilian population there was a strong feeling of national cohesion and hostility to the Serbs, whom they held responsible for attacking Croatia, its population and territory by occupying part of it illegally and through force. According to this source, HOS was created as a result of Serbian aggression and the fact that when it occurred, the Government of Croatia had not been militarily prepared to deal with it. HOS was estimated to number 15,000 volunteer troops, at that time, the vast majority of Croatian origin. This source

agreed that there were volunteers from other countries, but descendants of Croatians, and a few volunteers who were not. The feeling towards the latter is that, although they did not turn out in large numbers, they behaved generously towards the Croatian cause; they did so not for money nor did they display the cruel behaviour typical of mercenaries.

58. The civilian sources consulted did not deny the existence of mercenaries. They said that they had learned of the presence of a few, but described them as adventurers who had left when they realized that there was no money to pay them. Nevertheless, they agreed that they had known that military instructors of Irish, British and other nationalities had been working with the volunteer forces. The instructors did receive money, but it was not known how much. According to these sources, the executive decree of September 1992 ordering foreign volunteers to leave the country or join the regular Croatian forces legally was not properly applied. Some of the volunteers did indeed withdraw, but others went to Bosnia and Herzegovina. The civilian sources consulted said that they had not known of the presence of mercenaries who had worked with the Croatian army; however, they had heard that at one point between 1991 and 1992 there had been instructors who were former members of the French Foreign Legion as well as three training camps near Zagreb, run by Irishmen. Those were unconfirmed rumours, according to the sources themselves. In any event, most of the civilian sources agreed that there had been a significant foreign volunteer component in Croatia, mostly of Croatian origin. These mercenaries were reportedly few in number and their presence had been temporary; their pay demands could not be satisfied and their conduct had caused problems. One witness indicated that four Germans and some Frenchmen had recently arrived in the country, although he could not say whether they were volunteers or simply mercenaries.

59. Journalist sources admitted having information about the presence of mercenaries, although they also confirmed that the number of mercenaries was not very large and that such reports had been wildly exaggerated. One of the journalists interviewed said that he had learned of six foreign military professionals, possibly British and not of Croatian descent; they were well paid, but not by Croatia. He also mentioned some 50 Spaniards near Osijek. Two were accredited as journalists. The same source said that there had also been a group of soldiers of fortune from Western Europe, recruited in London by a certain Dr. Stambuck. The group had consisted of 1,000 to 1,500 persons between 20 and 25 years of age. The source also mentioned some Australians, a certain Mr. Werner Ilic and a Netherlands national who was captured near Gospic in early 1994 and died in Knin. The journalists added that these persons, presumably mercenaries, had not been recruited and had not been working with the regular Croatian armed forces. If paid at all, they must have been paid outside Croatia and by third parties. All the civilian sources consulted agreed that there had been very few foreign mercenaries and only at the very beginning of the conflict, mainly during 1991. Another point on which there was agreement was that members of the armed forces of Serbia and foreign mercenaries from the Eastern European countries, in particular the Russian Federation, Ukraine and Romania, fought alongside the Serbs of Croatia who had risen up against the Croatian State.

60. One military affairs expert who preferred not to be identified by name said that the mercenaries who fought in Croatia had had very little impact from the military standpoint. The first ones had come in 1991, mainly from Western Europe. Most of them were anti-communists from Spain, Germany, the Netherlands and Italy. A second group had come from the United States. It was made up of descendants of Croatians with military experience. Some had come from Argentina. In 1991, 20 or 30 Italians had formed special folgore units, although they lacked military experience. Croatia had established an international brigade, which was badly paid. The Croatian Government had very quickly incorporated foreigners of Croatian origin into its armed forces, although very few of them had stayed. The witness said he had had an opportunity to talk to some of the Italians, who had only given him information of a general nature. They had been paid very low wages, in local currency and had been given rather rudimentary weapons of local origin. For the most part the Serbs were instructors and the Croats soldiers. He added that the magazine "Soldiers of Fortune", available on North American news-stands, had mentioned the presence of Russians in the Serbian army.

61. In going on to describe his talks with the Croatian authorities, the Special Rapporteur would like to mention the spirit of cooperation and open-mindedness they had shown with regard to his visit and the work of the mission, as well as the facilities they had provided, enabling him to fulfil his mission. The first working meeting was held at the Ministry of the Interior, with Mr. Milan Brezak, a Ministry of the Interior adviser. Replying to the questions raised by the Special Rapporteur he said that he was competent to deal with the subject only as far as the Ministry of the Interior was concerned and that it should be approached in the light of the Serbian aggression and the independence of Croatia up to the establishment of the regular Croatian army in 1992. He said that there was nothing in Croatian policy that could be qualified as mercenary. There were, however, "volunteers" who should not be included in that category, since most of them were descendants of Croatians and therefore covered by jus sanquinis. He said that there was a category of individuals who might be called friends of Croatia who had come to help out (volunteers), including some journalists, who later became combatants.

62. He remarked that the "Serbian Republic of Krajina" (RSK) was a rural zone whose inhabitants were of a low educational level. There were training camps in that zone. He added that the Serbian occupation of part of Croatian territory was illegal. The Croatian Government considered the Serbs of Krajina to be Croatian citizens despite the fact that they were rebel groups that did not recognize the Republic of Croatia. Some Croatian Serbs had attempted to obtain Croatian papers. He explained that the Krajina Serbs were organized militarily by foreign mercenaries, chiefly Russians, Romanians and Germans. He mentioned the name of Captain Dragan, who had trained many Serbs and held an Australian passport. When the situation in Croatia had calmed down, the war had begun in Bosnia and Herzegovina, and the mercenaries had moved to the new theatre of operations. With regard to the granting of Croatian nationality to foreign combatants, Mr. Brezak referred to article 12 of the Constitution of Croatia which exceptionally empowered the Government to grant Croatian nationality on the basis of Croatian interests. Although he did not know the exact number, he said that only a few had wished to remain, mostly because they were married or about to be married to Croatians. He

promised to obtain the exact figure and send it to the Rapporteur. He added that the children of Croatians abroad had to comply with normal nationalization formalities through Croatian consulates.

63. The next interview was with Mr. Ivica Crnic, Minister of Justice, and his adviser, Mr. Josip Kardum. The Special Rapporteur's interest in holding the meeting centred on establishing the legal status of the foreigners who had gone to Croatia, determining whether they had participated in military operations and obtaining information on exchanges of prisoners through which it might have been possible to verify the presence of foreigners and decide whether they were mercenaries. In addition, he wished to learn whether any mercenaries had been detained or prosecuted and to obtain authorization to visit them and review the court proceedings; nothing was achieved in these two areas however. Although the Minister of Justice said that prisoners had been exchanged before being tried, the interview did yield some useful information, as follows: the Minister said that Croatian legislation did not contain provisions on mercenaries and that, although there had been foreigners in the Croatian army, their situation was now legal, since they were descendants of nationalized Croatians: they were therefore not mercenaries. He said he did not know of any individuals who had been tried as mercenaries, but would order an investigation. Exchanges of prisoners were not within the competence of the Ministry of Justice. The Rapporteur stated that prisoners were indeed within its competence and asked about foreigners. According to the Minister, international legislation, and in particular the Geneva Conventions, had been applied. Under Croatian legislation there was a Government committee on prisoners; there was also a presidential decree concerning the exchange of prisoners. Many foreigners came into the country with false Serbian papers, but they were known not to be Serbs since they did not speak the language. When the foreigners in question were Slavs, the language was learnt quite rapidly. The prisoners themselves had referred in their confessions to mercenaries in their midst.

64. The Minister of Justice stated that 6,500 Croatian prisoners had been released against 3,500 Serbian prisoners, and that there were mercenaries on the Serbian side, noting that the Serbs used mercenaries in Croatia in order to avoid using their own regular forces. The Special Rapporteur said that mercenaries could be identified when they were taken prisoner and that their names should be indicated on lists of prisoners or exchanged prisoners. The Minister said that his Ministry had not followed the question but that an investigation could be undertaken. He said that many prisoners were exchanged before being tried, but that there were lists of those who were exchanged immediately. He also mentioned testimony by Croatians in the so-called Serbian Republic of Krajina as a source of information on the presence of foreigners. According to their testimony, foreigners arrived in the occupied zone, were given a house and were forced to marry so that they could be settled somewhere in the territory. At the Special Rapporteur's request he said he would provide documentation.

65. The Special Rapporteur then had a meeting at the Ministry of Defence in which Mr. Marinko Kresic, Head of the Department of Personnel at the Ministry of Defence, Colonel Biro and other lower-ranking officials took part. Its purpose was to clarify the issue of volunteers in the Croatian army, reports of mercenaries in Croatia and reports by Croatia of attacks against it by

mercenaries. Mr. Kresic said that the regular Croatian army was made up of professional units and units of national volunteers defending their homes as part of the territorial defence system. Strict requirements had to be satisfied by persons wishing to enter either unit, Croatian citizenship being the main one. When there had been no regular army, the Ministry of the Interior (MUP) had been responsible for defence. In time volunteers had arrived, mostly of Croatian origin, but in very small numbers; mercenaries had never been accepted into the armed forces, which only Croatians could join. Many Croats from the Yugoslav People's Army had gone into the Croatian Army (HV). Another official added that, when the defence of the country had begun, Croatia had accepted foreigners as volunteers. In the heaviest fighting, on the eastern front, foreigners had attempted to organize an international brigade of some 50 individuals. There were two types of volunteers - those of Croatian origin and others who embraced the Croatian cause. The foreigners observed HV and MUP rules. The members of a small group that had displayed aberrant behaviour, including alcoholism and indiscipline, had been rapidly discharged.

66. Another participant in the meeting said that three groups of foreigners had come to Croatia: (1) Those who only caused problems; (2) Those sent by foreign interests (information), who were not much help and who also caused problems; and (3) Legitimate volunteers, whom Croatia rewarded by offering them the opportunity to remain there. There were no mercenaries in the regular Croatian army, and the foreigners who had come were no longer part of it. HV instructors were Croatian experts. Mr. Kresic undertook to provide the Special Rapporteur with information on the composition of the HV. The Special Rapporteur inquired about Serbian allegations that Croatia had highly professional mercenaries. Those allegations were hotly denied by the representatives of the Ministry of Defence, in whose opinion the Serbs were conducting intensive psychological warfare. They said that the aggressors considered all Croats to be mercenaries, using the term in a contemptuous way and placing emphasis on the volunteers, although they knew that volunteers were not mercenaries. In reply to a question concerning a Netherlands national taken prisoner at Knin and later tried and shot, they said that the person was of Croatian origin, that he had enlisted voluntarily in the HV, married and been granted Croatian citizenship. They said that they could provide the Special Rapporteur with all the documentation available on the volunteers issue. They denied the alleged presence of foreign instructors, stating that instruction had been provided by Croatian officers of the former Yugoslav People's Army from 1991 onwards.

67. Towards the end of the meeting, the participating officials referred to the situation in the occupied areas of Croatia. They said that the Serbs were recruiting foreigners in order to organize paramilitary forces, whose members were from the former Union of Soviet Socialist Republics (USSR). As evidence they cited the capture in 1994 in the town of Zadar of a Russian citizen, who was a military instructor and confessed that he had been there since 1991 training Serbian paramilitary forces. They also mentioned the "war dogs", namely, attack forces that waged "week-end wars", so called because they entered Croatia on week-ends to commit all sorts of atrocities, with permission to loot and plunder as their reward. They said that the foreigners - presumably mercenaries - fighting on the Serbian side were from Romania, Ukraine and Russia. The Romanians had worked for the Securitate; the Russians

were mainly pilots. At the beginning of the conflict the Serbs had been without pilots and had hired Russians to fill the gap. At the end of the meeting they said that during 1993 there were very few conflicts in Croatian territory; engagements had taken place on the territory of Bosnia and Herzegovina, and 15 Romanians and an Egyptian general had been captured in Herzegovina itself. They offered to obtain their names, since the presence of foreigners had been regularly detected by the intelligence services. They were also aware of the presence of Croatian volunteers in Bosnia. Referring to the mujahidin who had come to Bosnia from Islamic countries, they said that they were aware of their presence in connection with the army of Bosnia and Herzegovina and of their possible interest in the founding of an Islamic State. In their view the mujahidin should not be considered as mercenaries. They gave no additional information about the conflict in Bosnia and Herzegovina, rather emphasizing the defence of Croatian national interests under the responsibility of its national army.

68. The Special Rapporteur's last meeting was with Mr. Mate Granic, the Minister of Foreign Affairs and Deputy Prime Minister of Croatia. The purpose of the meeting was to confirm some of the information received during the visit and to determine the formal position of the Government of Croatia on the mercenaries issue. The Minister said that he had been a member of the Croatian Government since the beginning, and also vice-chairman of the war cabinet, responsible for war victims. He emphasized that the presence of mercenaries had never been mentioned in any official body. The number of volunteers in the Croatian forces was extremely small and, although insignificant from a military point of view, they had provided important moral support. He said that what Croatia had needed was not people but weapons. In 1991 Croatia had been isolated, which had made Serbian aggression possible. Some 108 humanitarian organizations had arrived, 33 of which had been Muslim. Not all engaged in humanitarian work, but nor were they directly involved in the fighting. Their function was rather to act as sources of information. There were more representatives of human rights organizations in Croatia than in any other European country. It had never been necessary to call on mercenaries. The Serbian plan was to create a greater Serbia, for which the former Yugoslav People's Army had armed the Serbs of Krajina and helped them occupy it. That was how Serbia justified its presence and that of its volunteers in Croatia. Some 8,000 Serbs had entered the occupied areas of Croatia from Belgrade. The Serbian secret police was continuing its activities, giving the impression that Serbia was being threatened by mercenaries in Croatia. The Hungarians in Voijvodina and the Albanians in Kosovo were not recognized as minorities in Serbia. There were also regular Yugoslav forces in Krajina, but in the uniform of the so-called Serbian Republic of Krajina (RSK). Seventy per cent of RSK troops were Croatian Serbs, but the instructors and experts were from Belgrade. There were Russian generals who were being paid in Bosnia and Herzegovina. He added that his country had information about the presence of mercenaries in training camps located in northern Dalmatia, near Knin, and in Baranja. He said that the Serbian forces had mercenaries - some of whom were Russians and Romanians - in the occupied areas of Croatia. Finally, he said that Croatia's main requirement at the moment was the monitoring of its border, with 17 observation posts along the eastern sector and the frontier with Bosnia and Herzegovina.

B. Visit to the Federal Republic of Yugoslavia (Serbia and Montenegro)

69. The Special Rapporteur visited the Federal Republic of Yugoslavia (Serbia and Montenegro) from 19 to 23 September 1994 at the invitation of the country's Government, and followed a programme proposed by the Yugoslav Federal Ministry of Foreign Affairs. He also held discussions with institutions, public figures and journalists in Belgrade. The main aim of the visit was to obtain further details about and to verify on the spot the allegations made by the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) concerning the unlawful participation of mercenaries in the conflicts that had occurred first in Croatia and subsequently in Bosnia and Herzegovina, and at whose hands Serbian citizens suffered. The Special Rapporteur would like to testify to the cooperation he received in the course of his mission from the Yugoslav authorities, both in connection with the meetings and interviews held during his visit and the provision of some of the documents submitted.

70. The first meeting was held in the main office of the Federal Ministry of Foreign Affairs and its purpose was to coordinate various aspects of the visit, request documentary information and to obtain initial general information on the topics covered by the visit. The Ministry officials present were Ambassador Budimir Kosutic, Dr. Miodrag Mitic, Assistant to the Minister and Mrs. Mira Nikolic, representative of the Institute of International Relations. At the beginning of the meeting, after the programme of the visit had been drawn up, Ambassador Budimir Kosutic thanked the Special Rapporteur for the objective nature of his reports and wished to place on record that there was neither any war nor any mercenaries in the Federal Republic of Yugoslavia (Serbia and Montenegro). He said that the mercenaries were operating on the western bank of the Drina river, in Bosnia and Herzegovina, and that the Special Rapporteur's programme should include a visit to that area where there were witnesses to mercenary activities and mercenaries in prison. He added that the witnesses on the territory of the Federal Republic of Yugoslavia (Serbia and Montenegro) were refugees who lived in rural areas and that it was difficult to bring them together. The Special Rapporteur thanked Ambassador Kosutic for his suggestions, although he also said that he had not received an invitation from the Government of Bosnia and Herzegovina to enter its territory. He then set out the aims of his visit, which mainly concerned the allegations made by the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) about the alleged participation of mercenaries in the conflicts in Croatia and subsequently in Bosnia and Herzegovina, and said he was confident that he could collect the information necessary to prepare an objective and impartial report. In reply to the concerns he expressed, the Special Rapporteur was informed that every effort would be made to collect the documents he might require and that the Federal Ministry of Defence had information on foreign mercenaries detained in the Federal Republic of Yugoslavia (Serbia and Montenegro) who had been returned to their countries of origin in 1992. He was also informed that there were films of mercenaries in action and that evidence had been collected by the Military Medical Academy on crimes committed against the Serbian population by foreign mercenaries.

71. No details were given about the legal status of mujahidin combatants from Islamic countries present in Bosnia and Herzegovina, although it was confirmed that they were operating in Bosnia and Herzegovina against the Serbian population. Accounts of the number of mujahidin varied, although there were reported to be large numbers of them in Zenica, Bosnia and Herzegovina, where there was said to be a training school. Towards the end of the meeting it was emphasized that the Bosnian Serbs were the victims of aggression involving mercenaries and mujahidin. Mention was made of two Africans who were imprisoned in the so-called Serbian Republic of Bosnia and Herzegovina (Srpska Republic).

72. The second meeting was a joint session with representatives of the Federal Ministries of Justice and of the Interior. The main purpose of the meeting was for the Special Rapporteur to acquaint himself with Yugoslav criminal law relating to mercenaries and with the procedure followed to arresting them and returning them to their countries of origin. The Assistant Secretary-General of the Federal Ministry of Justice, Mr. Durbaba, explained that neither the Federal Penal Ccde nor the Penal Codes of the Republics classified mercenary activities as an offence nor were there any plans to classify them as such in any review of those instruments. However, a number of offences that might be committed by mercenaries had been classified. He further stated that Yugoslavia condemned mercenaries as well as all the nefarious aspects of their activities. However, he pointed out that little progress had been made at the international level to clarify the issue so as to facilitate the identification, prosecution and punishment of mercenaries. He suggested that, if such clarification was achieved through United Nations resolutions, it could help countries to improve their domestic legislation. The Special Rapporteur drew attention to the International Convention Against the Recruitment, Use, Financing and Training of Mercenaries and said that only 7 countries had ratified the Convention, whereas it had to be ratified by 22 in order to come into force. However, despite the objections of some States to certain parts of its text, it was preferable to be a party to the Convention in order, first of all to have means of taking effective action against mercenary activities and secondly to be able to improve its text. The representative of the Ministry of Justice replied that his Government's accession to the International Convention required approval by the Legislative Assembly.

73. Mr. Durbaba mentioned a number of foreigners unlawfully in Yugoslavia who had been detained while crossing the country with the probable intention of entering Bosnia and Herzegovina to take part in the armed conflict. In their statements to the police, the individuals in question generally claimed that they were in transit towards the West. He said that most of them came from eastern Muslim countries. Lack of evidence that they intended to take part in the fighting meant that it was only possible to establish that they were unlawfully in Yugoslavia before expelling them. The representative of the Federal Ministry of the Interior confirmed the statement by his colleague from the Ministry of Justice, and added that in recent months controls had been reinforced, as a result of which there were virtually no more unlawful aliens in transit. At the request of the Special Rapporteur he offered to provide lists of persons who had been detained for unlawful entry into the country, and their nationality. Regarding the combatants who, according to the communication from the Federal Minister of Defence, dated 12 July 1994, had

been returned to their respective countries, the representatives of the Ministry of Justice and of the Interior said that they were unaware of the matter. Nevertheless, the representative of the Ministry of Justice said that any such decision was the sole responsibility of Mr. Milan Panic, the then President of the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro).

74. The third meeting was with officials from the Federal Ministry of Defence, among whom were General Terzic, Colonel Nebojsa Savanovic and other officials, including a Mr. Tomo. The Special Rapporteur expressed the hope that the meeting would elaborate upon the communication, dated 12 July 1994, from Mr. Pavle Bulatovic, Federal Ministry of Defence and that it would be possible to obtain additional information and documentary evidence on the subject. General Terzic said that detailed information was available on each of the cases referred to in the communication of 12 July. He said that the Netherlands citizen Johannes Tilder had been born on 25 October 1963 in Enkhvizen, Netherlands, had graduated from the Royal Military Academy, and trained as a paratrooper and reconnaissance agent in the French Foreign Legion. He had subsequently served at a NATO base in Germany. He was able to obtain Croatian nationality through his marriage with a Croatian and had been living in Zagreb since 21 November 1991. On 5 April 1994 he had been captured in Teslin Grad, Krajina, during a reconnaissance and intelligence operation. He was second-in-command of the Ninth Guards Brigade, mainly composed of mercenaries, which was infamous for its crimes against Serbs in Lika. He died in Knin on 10 May 1994 in an attempt to escape while he was travelling in a military police vehicle.

75. General Terzic said that two United States mercenaries, Colton Glenn Perry and Pesa Nastazio Marin, had been handed over to the Chargé d'Affaires of the United States Embassy in Belgrade on 8 August 1992. A German mercenary, Hans Kurt Reisinger, had been handed over on 25 September 1992 to the Chargé d'Affaires of the German Embassy in Belgrade. The Federal Ministry of Defence also possessed a confession by the Netherlander Tilder. When the Special Rapporteur emphasized the need for documentary evidence to substantiate that the three aliens who had been expelled were mercenaries, he was told that there was a commission for the exchange of prisoners in the Ministry of Defence and that all such information was stored on computer. He was promised that the data would be retrieved and handed over to him. Regarding Tilder's confession, a French translation of his statement was sent to the Special Rapporteur. In reply to the Special Rapporteur's question about special training camps where, according to the communication of 12 July 1994, persons were being trained to fight against the Federal Republic of Yugoslavia (Serbia and Montenegro), Mr. Tomo explained that these camps, which were located mainly in Albania and Turkey, were used to train Albanians from Kosovo and Metohija as well as Muslims from the Raska region to carry out commando operations and acts of terrorism within the Federal Republic of Yugoslavia (Serbia and Montenegro). The main purpose of such acts was allegedly to destabilize Kosovo and Sandzak. It was said that Albanian and Turkish officers were responsible for the training in the camps. The camps in Albania, where approximately 2,120 persons were being trained, were said to be located at Llabinot, Pishkopeja, Skadar and Llabinot-Elbasan. In Turkey, the camps, where some 2,000 were being trained, were reportedly situated in the vicinity of Ankara. The Special Rapporteur asked what had been done by the

Yugoslav authorities in response to the allegations. He was informed that public trials were being held in Novi Pazar and Bijelo Polje and that when the trials ended, he would be given the case files. At the end of the meeting the participating officials reaffirmed that there had been mercenaries both in the Croatian ranks and in the army of Bosnia and Herzegovina, and when the Special Rapporteur emphasized the need for evidence, he was provided with copies of some of the documents in their possession.

76. The fourth working meeting took place at the Military Medical Academy (VMA) and was attended by Dr. Zoran Stankovic, a forensic expert, Dr. Sovilj and Dr. Savic. Mr. Bajic T. Milorad, Head of the Documentary Films Section also attended the meeting, whose purpose was to examine the information in the Academy's possession relating to the victims of armed conflicts on the territory of the former Yugoslavia who had been cared for by the Academy and to obtain information on the presence of foreign mercenaries among those responsible for their injuries. Dr. Stankovic said that the Academy had treated at least 650,000 war wounded and performed at least 4,500 autopsies. He showed video tapes of victims who had been attacked in incidents in December 1993 by individuals whom he identified as mercenaries. He said that he could give the Special Rapporteur the names of some of the mercenaries involved in Gospic and Medacki Dzep in September 1993, although the names of the victims had to be kept secret to protect them. Dr. Stankovic also showed slides, photographs and the case histories of some of the amputees and of persons who had been decapitated by foreign mercenaries. When the Special Rapporteur asked whether he had any evidence to substantiate his view that the acts had been committed by mercenaries, he said that the type of weapon and munitions employed, the position of the corpses, the nature of the wounds of the decapitated persons (between the fourth and fifth vertebrae) made it possible to conclude that those responsible were specialists, that they possessed special equipment and belonged to a different cultural and religious tradition from the peoples of the region. Reference was also made at the meeting to the presence among the Croatian forces of a Frenchman, Jean Michel Nicolier, of mercenaries from Germany who made up part of the 108th Brigade and of Netherlanders who belonged to the Ninth Motorized Brigade. Finally, a documentary entitled "Massacre", in which a mercenary of German origin testifies, was shown.

77. At the final official meeting, which was held at the Federal Ministry of Foreign Affairs, the various documents promised during the working meetings were to be made available. Ambassador Kosutic said that various points had been discussed with officials of the so-called Srpska Republic, who had informed him that they would send the Special Rapporteur detailed information about the presence of mercenaries guilty of crimes against its Serbian inhabitants. The Special Rapporteur pointed out that the documents given to him were incomplete. He emphasized that the complaints and allegations contained in the correspondence from the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) concerning the presence of foreign mercenaries in the armed conflicts in Croatia and Bosnia and Herzegovina had to be substantiated and verified on a case-by-case basis, with particular attention to allegations concerning the involvement of other Governments and the existence of training camps in other States. Ambassador Kosutic said that the Special Rapporteur had been given some of the documents at earlier meetings and that others would be provided later. His Government was also

working with officials of the so-called Srpska Republic to coordinate the submission of substantive information. He said that the Special Rapporteur should bear in mind that the allegations made by his country had been formulated by different Governments, and that certain explanations, such as those concerning the handing over of foreign mercenaries to the authorities of other countries could be provided only by the highest authorities of his Government. He suggested that the Special Rapporteur should also request information from the UNPROFOR authorities, who had drawn up a number of reports on the presence and status of foreigners on the territory of the former Yugoslavia. The Special Rapporteur said he had no knowledge of any such reports, and that if the Yugoslav officials present at the meeting were familiar with them, they should specify their nature.

78. In addition to the official meetings scheduled with authorities and officials of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Special Rapporteur held working meetings with sources of information within the community itself, namely, non-governmental human rights organizations, research centres, journalists and private citizens. The purpose of these meetings was to acquire a broader understanding of the alleged involvement of mercenaries in the armed conflicts taking place in the territories of the former Yugoslavia. The meeting with the Yugoslav Red Cross was of particular importance. The Special Rapporteur met its leading officials, to whom he explained the purpose of his visit and from whom he requested any information in their possession relating to the involvement of foreign mercenaries in the armed conflicts in Croatia and Bosnia and Herzegovina. He said that their role in caring for the wounded, for displaced persons, participation in prisoner exchanges, etc. could well have provided them with first-hand knowledge of the matter. It was natural to assume that the wounded would know who their attackers were. The Yugoslav Red Cross representatives, namely, Dr. Rade Dubjic, Secretary-General, Dr. Bosko Jakovljevic, expert in international humanitarian law, and Dr. Miodrag Starcevic, human rights adviser, emphasized the essentially humanitarian nature and objectives of the Red Cross, whose role was limited to caring for the victims of war within the framework of the Geneva Conventions of 1949. They said that there were 460,000 refugees on Yugoslav territory, 15 per cent of whom were Muslims and Croatians, and that there were 1,500 war-wounded in hospital. They provided no information about the presence of mercenaries, however, and emphasized that not only were they far from areas where mercenaries operated, but that the very nature of their work prevented them from asking patients whether or not they had been wounded by mercenaries. However, at the insistence of the Special Rapporteur, they said that they might have personal, but not official information about the presence of mercenaries, which they had acquired mainly through the press or hearsay.

79. The Special Rapporteur also met Mr. Vojin Dabic, a member of the board of the Serb Council and director of its Information Centre. The Special Rapporteur told him that he would appreciate information about the involvement of mercenaries in the armed conflict that had taken place in Croatia and in the one taking place in Bosnia and Herzegovina. Mr. Dabic said that the Serb Council was a non-governmental organization which dealt with the question of mercenaries only when they committed crimes against the civilian population. He said that the first reports about the presence of mercenaries had been received in 1991, when allegations were made that Jean Michel Nicolier, a

French mercenary born in 1965, and Harlan von Besinger, a German mercenary, were fighting alongside Croatian forces in Vukovar, where they had committed crimes against the civilian population. Nicolier was wounded in combat and the Serbian prisoners Zivkovic Branko and Vergas Vaslav were compelled to give him blood. The three of them had type O negative blood. Dr. Vesna Bosanac also forced two other persons to give their blood to Nicolier, although they were unable to testify as they subsequently died. These events had occurred between 31 October and 9 November 1991. He added that most of the mercenaries fighting in Vukovar were mentally disturbed individuals who had come to commit crimes and make money. They were not used as soldiers but rather to commit crimes in order to terrorize the population. An Italian mercenary, Roberto Delle Fave, had said that the mercenaries ate human flesh. In its issue of 15 July 1994, the Croatian newspaper Globus had published a statement by a mercenary who said that his crimes were videotaped and then sold on the Italian black market.

80. Mr. Dabic said that other mercenaries tortured people in detention camps located in Croatia and in Bosnia and Herzegovina. Among those responsible, he mentioned a German mercenary called Kurt, who tortured prisoners in a camp at Rodoc, in the vicinity of Mostar, and in a camp in Celebic. The Serb Council was attempting to identify a Netherlands mercenary who had taken part in a massacre at Mirkovic Polje on 6 September 1994. In Croatia, the 108th Brigade of the National Guard was composed of mercenaries who were used to carry out lightning attacks on Krajina and who committed numerous crimes against the Serbian population. However, there were few witnesses, as the mercenaries did not usually let those who witnessed their crimes live. He said that the question of the mujahidin or Islamic combatants was more complex. A distinction had to be made between those officers and soldiers who were sent and paid by the Governments of Islamic countries, and those fighting as volunteers in the pay of the Government of Bosnia and Herzegovina. He said the Serb Council knew that Pakistani officers were fighting in the Fifth Corps of the army of Bosnia and Herzegovina. The Government of Bosnia and Herzegovina also engaged Afghan, Iranian, Libyan and Lebanese officers for its armed forces. Some of them, mainly the Libyans, spoke Serbo-Croat and were familiar with local customs because they had been trained in the former Yugoslavia under the socialist regime. Some Pakistanis, including an officer named Bhuto, had committed crimes against the Muslim and Serbian populations in Krajina. The presence of mujahidin and Islamic combatants in Bosnia and Herzegovina had led to the development of fundamentalist tensions and a feeling of unease among the Muslim population of Bosnia itself, on account of the sectarian and intolerant behaviour of the former; not all the combatants were fighting because of their religious beliefs. Lastly, Mr. Dabic offered to give the Special Rapporteur a file on the presence of mercenaries and their crimes which the Serb Council intended to compile. At the time of writing, the Special Rapporteur had not yet received this file.

81. On the final day of his visit, the Special Rapporteur had a meeting with Mr. Vladislav Jovanovic, Federal Minister of Foreign Affairs, whom he thanked for the cooperation he had received in the course of his various working meetings, and to whom he reiterated his intention of preparing an objective and impartial report, emphasizing that the evidence offered in support of the allegations formulated by the Government must be made available. The Minister thanked the Special Rapporteur, reiterated his Government's condemnation of

the presence and activities of mercenaries on the territory of the former Yugoslavia and said that the Federal Republic of Yugoslavia (Serbia and Montenegro) was not at war with any other country, but rather the victim of the sanctions imposed by the international community. The Minister firmly rejected any charges that his country was involved in using mercenaries and reaffirmed the peaceful intentions of the Federal Republic of Yugoslavia (Serbia and Montenegro).

82. The Special Rapporteur wishes to place on record the fact that, during his stay in Yugoslavia, he received only a very small proportion of the documentation he had been promised. He subsequently received a document entitled "Information on mercenaries previously and currently active on the territory of the former Socialist Federal Republic of Yugoslavia", prepared by the Committee for the compilation of data on crimes against humanity and international law. According to this document, the following individuals fought as mercenaries alongside the Croatian armed forces at Medak:

(a) Rik Grauwert, a Netherlander from Den Helder, 27 years of age and a former sergeant-major in the Netherlands Army;

(b) Raymond Van Der Linden, a Netherlander, 35 years of age, born in Roosen Daal;

(c) Andre Van Der Aaart, a Netherlander from Lissen, 29 years of age and a former corporal in the Netherlands Army;

(d) Mark Molenaar, a Netherlander, born in Amsterdam, 24 years of age and a former soldier in the Netherlands Army;

(e) Edwin Hoovens, a Netherlander from Vendlo, 26 years of age and a former soldier in the Netherlands Army;

(f) Martin de Porres, a Netherlander from Ambon, Indonesia, 33 years of age and a former sergeant-major in the Netherlands Army;

(g) Joost Van Dijk, a Netherlander, born in Den Boch, 26 years of age and a former mines and explosives expert in the Netherlands Army;

(h) Tom Chittum, a United States citizen, born in Whoopaki Lake, 46 years of age and a Viet Nam veteran;

(i) Harmut Lange, a German from Berlin, 27 years of age;

(j) Ellijas Laslo, a Hungarian, and a former paratrooper in the Hungarian Army;

(k) Johannes Tilder, a Netherlander from Enkhvizen, 31 years of age, with a reconnaissance and paratroop diploma from the Special Military School of the Netherlands Army, a former member of the French Foreign Legion.

83. According to the documentation referred to, the above individuals are allegedly guilty of war crimes against Serbian civilians in Medak. According to the same documentation, the following foreigners were also members of the Croatian Armed Forces:

(a) Bart Velt, a Netherlander, born in Haarlem, 30 years of age and a former accountant with the Netherlands Army, who allegedly served in the Croatian forces in Perusic;

(b) Johannes Stelling, a Netherlander from Drachten, 28 years of age, who allegedly fought in Herzegovina and in Livno;

(c) Ronald Geurts, a Netherlander born in Utrecht, 27 years of age, who allegedly served with the Croatian forces in Perusic;

(d) Peter Van Eekeren, a Netherlander, who was allegedly an instructor for the Croatian forces in Jastrebarsko.

84. Among the mercenaries who allegedly fought alongside the Croatian forces at Bosanska Posavina, in Bosnia and Herzegovina, the communication in question mentions Uslisti Aleksandrovic Sergej, born on 18 July 1963 in Omsk, and Trisin Borisovic Aleksej, born on 6 July 1964 in Novosibirsk. The communication also mentions the following foreigners who allegedly fought at Tesanj and Teslic in September 1992 alongside the armed forces of Bosnia and Herzegovina: Abu Isak, a Saudi Arabian; Abu Xerib, a Saudi Arabian; and Seih Abu Sulejman. Venzhov Zhejiang, of Franco-Chinese extraction and Abi Abu Safijahsi, a Jordanian, allegedly fought with the same forces in Derventa. A Turkish citizen, Aztruk Mahmut, reportedly fought in Prijedor. Ibu Raha, a Saudi Arabian, Shaher Al Sharif, a Syrian, Abu Falah and Abu Amin, Egyptians, Ijas Medini, Abu El Zubeir and Abdurahman Abu Sarahudin, Saudi Arabians, were reportedly wounded in combat and hospitalized in Zenica.

85. The Special Rapporteur has also received a French translation of four statements made in April 1994 by Johannes Tilder to Captain Mico Cudic and Senior NCO Branko Potkonjak. In his statement, Tilder said that he was an officer in the Royal Netherlands Army and a sub-lieutenant in the Croatian Army. He said that, during a short period of service in the French Foreign Legion in 1990, he was contacted in the Netherlands by the "Aid for the Croatians", "Nederlandse Welk Gemenschap" and "Centrum Democraten" organizations. He arrived in Croatia on 22 November 1991 and then served in Gospic before becoming deputy-commander of the reconnaissance company of the Ninth Motorized Guards Brigade, known as the "Vukovi". In his statements he gave details of a number of military actions and attacks against the Serbian civilian population, and described circuits for foreign assistance for the Croatian cause. He said that in October 1991, Branimir Glavas established an international brigade of foreigners, mainly Germans, Englishmen, French, Americans and Austrians, in a Zagreb barracks. The commander of the international brigade was a German known as Captain Hans. Most of the members of the brigade had served in the French Foreign Legion.

C. General evaluation of the visits

86. The Special Rapporteur considers that his visits to the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) pursuant to his mandate were of great importance, and he appreciated the cooperative attitude of both countries. During his working meetings with the authorities and officials as well as with community representatives in the two countries, he was able to receive and analyse information on the various allegations submitted. These allegations were, however, supported mainly by written confessions, statements and opinions based on a general knowledge of combat situations. When this report was drafted the documentation proposed by the Croatian authorities had still not been sent and that received from the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro) is only part of what the Special Rapporteur was promised. For this reason, the Special Rapporteur considers that he is not in possession of all the necessary facts to enable him to draw his final conclusions. What is needed is sounder evidence in the form of reliable documents, as well as interviews with witnesses who actually saw mercenaries and with victims of their acts, interviews with mercenaries who have returned to their countries of origin, in order to pursue the elucidation of this issue. However, the visits constituted an important step in this direction, and will serve to ensure the continuation of the Special Rapporteur's work on a firmer basis.

87. The visits enabled the Special Rapporteur to achieve some progress in his investigations and to make the following preliminary appreciations:

(a) The presence of foreigners and alleged mercenaries in the 1991 war in Croatia and in the war in progress in Bosnia and Herzegovina since 1992 coincided with serious violations of international humanitarian law and the human rights of the peoples affected, and psychological warfare played a fundamental role in the development of the armed conflict. An investigation is, however, needed to ascertain to what extent foreigners and mercenaries were assigned the task of perpetrating the worst kinds of war crimes and atrocities against local populations and whether their share of the responsibility is greater than that of nationals;

(b) Foreigners have been involved in circumstances of questionable legality in the armed conflict which took place in Croatia and in the current conflict in Bosnia and Herzegovina. This assertion must be qualified, however, by specifying in which cases these foreigners were mercenaries. In accordance with the present state of international law on the subject, persons sent by a State which is not a party to the conflict on official duty as members of its armed forces should not be classified as mercenaries;

(c) Similarly foreigners who joined the armed forces of a State as regular and permanent members and received material compensation similar to that promised or paid to combatants of similar ranks and functions in those armed forces, and who are not motivated to take part in the hostilities essentially by the desire for private gain or material compensation, should not be classified as mercenaries. This means that volunteers should be excluded. Only persons motivated essentially by the desire for private gain to take part in hostilities and those who have, in fact, been promised

material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of the party to the conflict can be considered to be mercenaries;

(d) Only when a person is not a national of a party to the conflict or resident in a territory controlled by a party to the conflict is he a mercenary. Nationals and residents may not be regarded as mercenaries. A mercenary must be a non-resident alien;

(e) The conditions that must be satisfied in order to classify a person as a mercenary set out in article 47 of Protocol I of the Geneva Conventions of 1949 and the International Convention against the Recruitment, Use, Financing and Training of Mercenaries are cumulative and concurrent; this means that a person must satisfy all these conditions if he is to be classified as a mercenary. The Special Rapporteur is aware that these points are difficult to prove in practice and make it easy for the mercenary to elude such classification while the party victim of the aggression finds itself deprived of the right of punishment or legitimate reparation;

(f) The granting of the nationality of a State after the event, even though based on the jus sanguinis criterion, does not alter a foreigner's status until the actual moment the new nationality is granted;

(g) With respect to allegations concerning the presence of mercenaries in Croatia, foreigners who joined the regular Croatian army as normal and permanent members, receiving compensation similar to or less than that promised or paid to combatants of similar ranks and functions in that regular army, should not be classified as mercenaries. They were volunteers and not mercenaries. Mercenaries are persons who fight, motivated by the desire for private gain and, in fact, are promised material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions. Cases of foreigners who joined international brigades and the relationship between these brigades and the State's system of defence should be the subject of a special investigation. During his visit, the Special Rapporteur was informed by Croatian sources that soldiers of fortune had arrived in the country and had acted in an undesirable manner. In any event, it must be determined whether they received or were promised compensation, the amounts of such compensation and who promised or paid it to them;

(i) Lastly, the question of the mujahidin, or Islamic combatants allegedly involved in the armed conflict in the Republic of Bosnia and Herzegovina, needs to be studied. In this case persons sent by States which are not parties to the conflict on official duty as officers or soldiers of their armed forces should be excluded. Foreigners who have joined the armed forces of Bosnia and Herzegovina as regular and permanent members, receiving material compensation similar to or less than that promised or paid to combatants of similar ranks and functions of those armed forces should also be excluded. It must then be decided whether these persons are motivated to take part in the hostilities essentially by the desire for private gain, and in this context, the possibility of religious or cultural motivation analysed;

(j) Cases of dual and multiple nationality used simultaneously must also be studied.

88. The comments contained in the foregoing paragraph are not final for the Special Rapporteur, but simply ideas and elements that may be useful in pursuing the study of this topic in greater detail.

V. CURRENT STATUS OF THE INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES

89. The International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly in resolution 44/34 of 4 December 1989, is to enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations, in accordance with article 19, paragraph 1. The Special Rapporteur is compelled to draw attention to the slow pace of the process of expressing consent to be bound by the international convention through ratification or accession, since up to now only seven States have completed this process: Barbados, which acceded to it on 10 July 1992; Cyprus, which deposited its instrument of accession on 8 July 1993; Maldives, which signed the Convention on 17 July 1990 and ratified it on 11 September 1991; Seychelles, which acceded to it on 12 March 1990; Suriname, which signed it on 27 February 1990 and ratified it on 10 August 1990; Togo, which deposited its instrument of accession on 25 February 1991; and Ukraine, which signed it on 21 September 1990 and ratified it on 13 September 1993.

90. It should also be noted that a further 13 States have signed the International Convention: Angola (28 December 1990), Belarus (13 December 1990), Cameroon (21 December 1990), the Congo (20 June 1990), Germany (20 December 1990), Italy (5 February 1990), Morocco (5 October 1990), Nigeria (4 April 1990), Poland (28 December 1990), Romania (17 December 1990), Uruguay (20 November 1990), Yugoslavia (12 December 1990) and Zaire (20 March 1990).

VI. CONCLUSIONS

91. The recruitment, use, financing and training of mercenaries to commit acts that adversely affect the self-determination of peoples, the sovereignty of States, the constitutional stability of Governments and human rights have been condemned by various international instruments and resolutions of United Nations bodies, while according to data collected by the Special Rapporteur, many States have included mercenarism as a punishable offence in their national legislation.

92. From the information gathered, classified and analysed by the Special Rapporteur, it is clear that mercenary activity is not limited to the agent who actually commits the criminal act. He is merely the one who executes a wrongful act. In reality, before a mercenary is recruited and before he commits a wrongful act, there has to be an operation which has been conceived, planned, organized, financed and supervised by third parties; the latter may be private groups, political opposition organizations, groups which advocate national, ethnic or religious intolerance, clandestine organizations, paramilitary groups or Governments which, through covert operations, decide on illegal action against a State or against the life, liberty, physical integrity and safety of persons, and involve mercenaries in that action.

Responsibility for a mercenary act extends to the agent who executes the criminal act in its final phase, but also to all those who, individually or collectively, participated in the wrongful act of using mercenaries for the commission of a crime. This, therefore, leads to the conclusion that vigilance, control and express prohibition provided for by Member States in their domestic legislation are very important in order to prevent organizations which generate mercenary activities from operating in their territory and, where necessary, to counter any intelligence machinery that, through covert operations, permits the involvement of government agents who recruit mercenaries or do so through third organizations, by prescribing harsh punishment for such unlawful contractual relationships.

93. In addition to the general observations made above, it can be said that mercenaries are most frequently recruited to commit acts of sabotage against a third country, to carry out selective assassinations of eminent persons, and to participate in armed conflicts. It therefore follows that a mercenary is a criminal who, without prejudice to the punishment applicable to those who recruited and paid him, must be severely punished, in keeping with the categorization of the common crime he has committed, where national law does not envisage the crime of mercenarism as such. In any case, the person's mercenary role should be considered as an aggravating factor.

94. The condemnation of mercenarism is a universally accepted fact, even in those States which have not yet specifically categorized it as a crime. At this point, the debate is focused on the scope and content of this punishable act, but not on its criminal nature. Moreover, without prejudice to the further development of international legal instruments and of the provisions of national law, Member States should strengthen their capacity to formulate policies on the prevention, prosecution and punishment of mercenary activities. The prevention aspect is fundamental and must include such matters, as, for example, use of the open labour market in recruiting persons for unspecified activities. This topic is extremely sensitive and should be examined by each country in accordance with the nature of its economic system as protected by the Constitution. In any case, it cannot be alleged that there is any contradiction between constitutional and international norms. If mercenary activities are considered a crime, it cannot be argued that it is permissible to use the open market to recruit mercenaries.

95. Mercenaries are generally people who have belonged to the regular armed forces of a country and as such have taken part in military conflicts. In other words, it is their job to make war and it is for this precise reason that their services are sought. From this standpoint, the unemployment they face when they are repatriated and retired from the regular forces and certain personality changes they have undergone as a result of warfare may contribute to their becoming mercenaries. The present supply of mercenaries is influenced by the existence of career military personnel whose personal situation has deteriorated as a result of the reduction in strength or dissolution of the regular armed forces to which they belonged and who have consequently joined the ranks of the unpaid.

96. Despite the already complex nature of the general picture, there are certain situations that cannot be classified as mercenarism under international law as it now stands. There is a tendency to use the term too

loosely, and as a means of referring in ordinary conversation to any adversary assumed to indulge in immoral conduct and be partial to ill-gotten gains. An examination of situations involving the right to sovereignty and self-determination, reveals aspects which do not precisely fit the description of mercenarism, although other factors can be observed, namely, criminal conduct, payment, involvement in a conflict on behalf of a third party, etc. In some cases, use is made of legal formulas or, more specifically, normal legal procedures as a cover for the mercenary. He may then appear with the legal identity of a national of the country in whose armed conflict he is involved, or where he will be performing a criminal act, and thus avoid being categorized as a mercenary. Although the use of such a device legally conceals the mercenary's real status, the origin of the contractual relationship, the payment, the type of services agreed, the simultaneous use of other nationalities and passports, etc. serve as leads for establishing the true nationality of persons involved in an armed conflict in respect of whom there are well-founded suspicions that they are mercenaries. However, the use of multiple nationalities, the concealment of the person's alien status, or the free movement of persons who may be presumed to be mercenaries should, at expert and specialist meetings, serve as a basis for determining how the concept should be updated and what preventive measures should be taken against mercenarism.

97. The information gathered confirms that in recent years various African countries suffered from mercenary activities. In this connection, it should be recalled that the concept of a mercenary, as construed today, took as its point of departure the presence of professionals of war, most of them white, who were active in bloody armed conflicts in various regions of Africa in order to prevent the exercise of the right to self-determination, independence and the formation of sovereign African States, and to form territorial enclaves subordinate to former colonial Powers or to install Governments subordinate to them or to colonialist ventures. In so far as some of these conflicts have been settled, mercenary activities can be said to have subsided. But they have not disappeared completely. Angola, Benin, Botswana, the Comoros, Lesotho, Liberia, Mozambique, Namibia, Zaire, Zambia and Zimbabwe, inter alia, were countries with experience of mercenary activity; and in certain cases, outside the region of southern Africa, mercenary attacks occurred as a result of the policy of apartheid which originated in South Africa but has ramifications and has sparked criminal activities all over Africa and even outside it.

98. The political and military conditions in which the Angola Peace Agreement was signed in Lusaka provide a more realistic basis for confidence in its effective implementation, which should lead to political stability and the national reconciliation of the entire Angolan people. In the context of this process, the Special Rapporteur considers that particular care should be taken in investigating crimes attributable to mercenaries and ensuring that mercenaries are effectively withdrawn from the territory of Angola. The suffering of the Angolan people throughout a war constantly involving gangs of mercenaries who perpetrated terrible crimes, should be invoked by the international community in condemning and eradicating mercenary activities as directly and effectively as possible.

99. In relation to the mercenary activities generated in South Africa within the context of the policy of apartheid, whose backdrop has been both South Africa, other countries of the region and even countries outside Africa, the report demonstrates that mercenary activities have substantially abated with the progressive dismantling of apartheid. The holding of the first multiracial and democratic elections in April 1994 foreshadow the beginning of a process that will consolidate democracy and ensure full respect for human rights in South Africa. As this process continues it is hoped that the resistance of a few extremist white minority groups, who have even recruited mercenaries in order to be able to organize themselves on a military basis and receive military training, will be brought under control, and that the crimes committed by officials, civil or military Government agents, mercenaries and members of paramilitary units against the population of South Africa and neighbouring countries can be investigated and punished.

100. The Special Rapporteur considers that his visits to the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), pursuant to his mandate in September 1994, were of great importance. However, when he was completing this report, the documentation that was to have been received from the Croatian authorities and part of that promised by the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro) had still not been dispatched; as a result, the Special Rapporteur considers that he is not in possession of all the material he needs to draw his final conclusions. He is, however, able to present the following appreciations as working hypotheses.

101. With respect to allegations concerning the presence of mercenaries in Croatia, foreigners who joined the Croatian regular army as regular and permanent members, receiving compensation similar to or less than that promised or paid to combatants of the same ranks and functions of this regular army, should not be classified as mercenaries. They were volunteers and not mercenaries. Mercenaries would be persons motivated to fight essentially by the desire for private gain and, in fact, who were promised material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions. Cases of foreigners forming part of international brigades and the relationship between those brigades and the State defence system should be given particular attention. It should be determined whether they received or were promised compensation, in what amounts, and who promised it or paid it.

102. A study should also be made of the question of the mujahidin or Islamic combatants allegedly involved in the armed conflict taking place in the Republic of Bosnia and Herzegovina. In this case persons sent by States which are not parties to the conflict on official duty as officers or soldiers of their armed forces should be excluded. Foreigners who have joined the armed forces of Bosnia and Herzegovina as regular and permanent members, receiving material compensation similar to or less than that promised or paid to combatants of similar ranks and functions of those armed forces should also be excluded. It must then be decided whether these persons are motivated to take part in the hostilities essentially by the desire for private gain and, in this context, possible religious or cultural motivation analysed. In any case, the nationality factor should always be taken into account.

103. With regard to the current status of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the Special Rapporteur notes that to date only 7 States have completed the process for becoming parties to the Convention (Barbados, Cyprus, Maldives, Seychelles, Suriname, Togo and Ukraine), and that a further 13 States have signed it. This situation has prompted the conclusion that there is a delay in the process by which Member States express consent to be bound by the Convention through ratification or accession, for until 22 States have ratified or acceded to it, the Convention cannot enter into force.

VII. RECOMMENDATIONS

104. The Special Rapporteur, in view of the fact that mercenary activities have not subsided - a situation that affects the human rights and self-determination of peoples, and taking into account the United Nations declarations and resolutions condemning such activities as serious crimes which give all States cause for profound concern, recommends to the Commission on Human Rights that it should reaffirm its condemnation of mercenary activities of any type or form and at any level, and of States or third parties involved in them. He further stresses the need to strengthen the principles of the sovereignty, equality and independence of States, the self-determination of peoples, full respect for human rights and the stability of constitutionally established and lawfully functioning Governments.

105. Bearing in mind that mercenary action takes place chiefly, but not exclusively, in the context of armed conflict, as mercenary operations have also been staged where there was no armed conflict, it is recommended that the Commission on Human Rights should stress that the use of mercenaries in itself and their use for unlawful activities are to be condemned, both in cases where such activities are carried out by one or all parties to an armed conflict and in cases where there is no armed conflict, and mercenaries are resorted to for purposes of impeding the self-determination of a people, damaging a country's installations, destabilizing the constitutional Government of a State or endangering the life and safety of persons.

106. Bearing in mind the nature, forms, contractual relations and specific characteristics which go to make up mercenary activities, the Special Rapporteur suggests that the resolution condemning mercenary activities should also recommend that Member States should include an explicit prohibition in their domestic legislation in order to prevent organizations linked to mercenaries from operating in their territories, or carrying out contractual activities such as propaganda and advertising on behalf of paramilitary personnel and mercenaries. They should also prohibit public authorities from resorting to mercenarism and counter any intelligence machinery which through covert operations uses mercenaries or does so through third organizations.

107. In view of the existence of surplus military personnel who have become unemployed as a result of the reduction of the numbers of the armed forces of many countries, and the possibility that they may become mercenaries, Member States are recommended to set up policies of prevention, exchange of information and care for persons of this type who have developed a tendency towards aggressive behaviour. It is possible to implement a policy of employment and psycho-social care for people with problems resulting from

their participation in warfare, and it is also possible for the State to establish a legal framework for the activities of associations of former combatants to prevent them from going to extremes, such as the glorification of war, the fostering of intolerance and the adoption of ideologies that nurture violence and military interventionism. States therefore have an interest in preventing bands of mercenaries from being formed or acting within their territory, in enacting laws that criminalize mercenarism and in taking legal action to suppress mercenary activity. Where mercenaries are former members of the armed forces or the police, this should be an aggravating circumstance and the penalties should be more severe.

108. The prevention aspect is fundamental and must include such matters as, for example, use of the open labour market in recruiting persons for unspecified activities. This topic should be examined by each country in accordance with the nature of its economic system as protected by the Constitution. If mercenary activities are considered a crime, it cannot be argued that it is permissible to use the open market to recruit mercenaries. In the same way, States have the capacity to prevent their territory from being used for the training, massing or transit of mercenaries, and to adopt measures to ensure that their financial and economic systems cannot be used to facilitate operations linked to such illicit activities.

109. There must be no attempt to justify mercenaries in the media nor any misconceptions regarding this type of human behaviour. National legislation must be very harsh on the temptation for State services, such as intelligence services, or authorities with repressive proclivities or private totalitarian-minded associations, to resort to markets where mercenaries are available, to recruit individuals for the purpose of establishing praetorian guards, death squads or operational groups devoted to political repression or the assassination of political or religious adversaries.

110. Some measures which should be implemented are the cancellation of the licences and operating permits of private entities that have hired or recruited mercenaries to engage in illegal activities, the refusal of passports or visas to mercenaries and prohibiting them from passing through the territory of the State.

111. Africa is still the continent most affected by mercenary activities, which persist in certain conflicts in the region and continue to pose a latent threat to other African countries. It is therefore recommended that the Commission on Human Rights should reaffirm its strong condemnation of the presence of mercenaries and of those States and third parties which promote mercenary activities in Africa, and at the same time reiterate its unqualified support for the self-determination and development of the African peoples, and the full enjoyment of their human rights.

112. Further to the previous recommendation, and bearing in mind that the elimination of the apartheid regime in South Africa and the installation of a democratic and multiracial regime in that country may favour the reduction of mercenary activities, it is recommended that all persons of foreign nationality who have served as mercenaries in armed conflicts or in support of apartheid, whether or not they have served sentences, should be expelled from African countries, while at the same time nationals who have participated in

mercenary activities should also be liable to provisions in the respective legal system of each country which establish penalties of the greatest severity for recidivism. It is also recommended that organizations which proclaim recourse to violence should be legally dissolved, disarmed, the mercenaries in their service expelled, and the crimes committed investigated and punished to ensure that the authors of these acts do not enjoy impunity.

113. The Special Rapporteur recommends that, in the context of the peace process in Angola, the crimes and violations of international humanitarian law and human rights attributable to mercenaries should be investigated and measures adopted to ensure that the mercenaries are in fact withdrawn from the territory of Angola.

114. The Special Rapporteur recommends that the authorities of the States which have emerged in the territory of the former Yugoslavia and are affected by armed conflicts should be asked to keep a detailed record of aliens entering their countries, and particularly of those taking part in the hostilities. Indeed, it should be borne in mind that the presence of aliens in an irregular situation is a factor that has contributed to the escalation of the conflict, its complexity and the perpetration of cruel acts which have mainly affected the civilian population.

115. It is recommended that the record should make a distinction between the following: (a) Aliens who have been sent on official duty as members of their armed forces by States which are not parties to the conflict; (b) Aliens of national origin who have joined the armed forces and who have been promised or paid material compensation similar to or less than that promised or paid to combatants of similar ranks and functions in those armed forces; (c) Aliens who are motivated to take part in the hostilities essentially by the desire for private gain, who have been specially recruited to fight and, in fact, have been promised material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions. In this last case, it is recommended that the competent authorities should conduct more detailed investigations of the entities or persons who recruit, train and pay these persons or who may have done so in the past, and immediately arrest those falling into category (c) above, and either expel them from the country or prosecute them if they have committed acts which are offences under the law.

116. Lastly, with regard to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the Special Rapporteur recommends that the Commission on Human Rights should suggest to those States which have not yet ratified it or signalled their intention to accede to it that they consider the advisability of speeding up this process, which will contribute to more effective action by the international community for the prevention, prosecution and punishment of mercenary activities, and contribute to the observance of the purposes and principles contained in the Charter of the United Nations.